



ONTARIO

**REPORT
ON
LIMITATION OF ACTIONS**

ONTARIO LAW REFORM COMMISSION

1969

DEPARTMENT OF THE ATTORNEY GENERAL





REPORT

of the

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The Ontario Law Reform Commission was established by section 1 of *The Ontario Law Reform Commission Act, 1964*, for the purpose of promoting the reform of the law and legal institutions. The Commissioners are:

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ONTARIO

ONTARIO LAW REFORM COMMISSION

PARLIAMENT BUILDINGS
TORONTO 2

TO THE HONOURABLE A. A. WISHART, Q.C.,

*Minister of Justice and
Attorney General for Ontario.*

Dear Mr. Attorney:

Pursuant to section 2 (1) (a) of *The Ontario Law Reform Commission Act, 1964*, the Commission initiated a study concerning the desirability of reforming the limitation laws of this Province. The Commission now submits its Report.

The Limitations Act of Ontario (R.S.O. 1960, c. 214) is a collection of provisions drawn from thirteen English statutes enacted between 1588 and 1888. In many respects the meaning of the Ontario statute is obscure, its language archaic and its substance out of touch with modern conditions. This has caused a considerable number of special interest groups to seek and obtain the passage of legislation providing that particular kinds of actions affecting them be governed by shorter limitation periods. There is no consistency in these special provisions, which are scattered throughout our statutes, and the result can be said to be nothing less than chaotic.

To the lawyer, Ontario's limitation laws are, at the very least, perplexing. They introduce an element of hazard into the practice of law which is quite unnecessary.

To the ordinary citizen, these laws are beyond comprehension. It is he, of course, who really suffers in their application.

The Commission concludes in this Report that the only solution is to re-write entirely *The Limitations Act* and that some twenty special limitation provisions should be repealed.



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S U M M A R Y

- A. PURPOSE OF LIMITATIONS
- B. THE SCOPE OF LIMITATIONS LEGISLATION
- C. HISTORICAL BACKGROUND
- D. PROBLEMS ARISING UNDER PRESENT LAWS
- E. GENERAL APPROACH OF THE COMMISSION
- F. REFORM ELSEWHERE

A. PURPOSE OF LIMITATIONS

Lawsuits should be brought within a reasonable time. This is the policy behind limitation statutes. These laws are designed to prevent persons from beginning actions once that reasonable time has passed. Underlying the policy is a recognition that it is not fair that an individual should be subject indefinitely to the threat of being sued over a particular matter. Nor is it in the interests of the community that disputes should be capable of dragging on interminably. Furthermore, evidentiary problems are likely to arise as time passes. Witnesses become forgetful or die: documents may be lost or destroyed. Certainly, it is desirable that, at some point, there should be an end to the possibility of litigation in any dispute. A statute of limitation is sometimes referred to as an "Act of peace".

There is an obvious but very significant point which must be borne in mind in considering the problem of limitations. The right to bring an action in the courts is not the equivalent of having a good cause of action. A plaintiff may or may not be successful in his lawsuit. His action may be so sound that it will not be defended. (Of some 7,000 county court actions commenced in the County of York in 1967, approximately 70% resulted in default judgments.) At the other end of the scale, a plaintiff may have such a poor case (it may even have been fraudulent) that he will discontinue the proceedings, once he sees that a good defence has been entered. Between these two extremes are the contested lawsuits. An action may be hotly contested as to the facts alleged or as to the law, or both. Both sides may think they have a good chance of winning, and each may have good reason for such a belief. On the other hand, actions may be begun or defended as a matter of tactics in the attainment of some other objective than success in the particular lawsuit. Thus, the bar raised by a limitations statute gives protection whether or not the potential defendant had, or thought he might have had, a good defence.

Apart from the protection they give to potential defendants, limitation statutes enable the courts to function more effectively by ensuring that litigation is not started so long after the event that there are likely to be evidential difficulties. In addition, the commercial world is able to carry on more smoothly. The limitation statutes encourage early settlements so that the disrupting effect of unsettled claims on commercial intercourse is minimized.

B. THE SCOPE OF LIMITATIONS LEGISLATION

The Limitations Act (R.S.O. 1960, c. 214), which is set out in Appendix B, provides for:

- (i) barring the bringing of actions;
- (ii) the extinguishment of title in the case of land; and
- (iii) the creation of prescriptive easements and *profits-à-prendre*.

Generally, a limitation period imposes a bar to the bringing of proceedings. It does not extinguish the right of the claimant although, practically-speaking, in most cases it will have that consequence. In a few situations, however, a statute-barred claimant may realize on his right. For example, the ownership rights in personal property subsist so that although an action for conversion may become statute-barred, a fresh conversion by a different person will give rise to a separate cause of action by the original owner against the person who committed the second conversion.

The same result would apply to real property were it not for a special provision in the limitations statute. A person who is wrongfully dispossessed of his lands has ten years in which to bring an action to recover them. However, at the end of that period not only is his action statute-barred, his title is extinguished. It is thus that a wrongful dispossessor obtains title by "adverse possession". The problem of the acquisition of title to land by "adverse possession" is not considered by the Commission in this Report. It is under review as part of the Commission's Law of Property Project.

The distinction between barring the remedy and extinguishing the right has significance in the fields of constitutional and private international law. In these two areas, barring the remedy is regarded as a matter of procedural law and extinguishment of right a matter of substantive law. The segregation of remedy from right has been criticized as unreal in practice and unsound in theory. Later in this Report, it is recommended that lapse of time should extinguish the right.

The Limitations Act also provides for the creation of prescriptive easements and *profits-à-prendre* arising from the adverse use of land over a period of time. These prescriptive rights may also arise in Ontario under the common law doctrine of the lost modern grant. This Report recommends that easements and *profits-à-prendre* no longer be capable of creation by prescription.

Time limits imposed for such matters as the filing of pleadings after a writ has been issued and the bringing of appeals are generally considered outside the scope of statutes of limitations. These matters are more closely related to court administrative procedure and are thus not dealt with in this Report.

On the other hand, certain statutes require a notice of claim to be given, usually within a very short period of time, by the potential plaintiff to the potential defendant. For example, section 443 (5) of *The Municipal Act* (R.S.O. 1960, c. 249) provides for the giving of such a notice where a claim is based on the failure of a municipality to repair a highway. In such an instance, the potential plaintiff must give notice of claim within ten days after the injury occurred in the case of a county or township and seven days in the case of an urban municipality. If such a notice is not given, the plaintiff is barred from bringing an action except in certain circumstances. Since requirements of notices of claim may deprive a person of his cause of action, the Report gives them consideration.

C. HISTORICAL BACKGROUND

The Limitations Act is based on a number of English statutes dating from the sixteenth to the last century. These were:

- Common Informers Act*, 1588 (31 Eliz. 1, c. 5)
- Limitation Act*, 1623 (21 Jac. 1, c. 16)
- Administration of Justice Act*, 1705 (4 & 5 Anne, c. 3)
- Crown Suits Act*, 1769 (9 Geo. III, c. 16)
- Statute of Frauds Amendment Act*, 1828 (9 Geo. IV, c. 14)
- Prescription Act*, 1832 (2 & 3 Will. IV, c. 71)
- Real Property Limitation Act*, 1833 (3 & 4 Will. IV, c. 42)
- Civil Procedure Act*, 1833 (3 & 4 Will. IV, c. 42)
- Real Property Limitation Act*, 1837 (7 Will. IV & 1 Vict., c. 28)
- Mercantile Law Amendment Act*, 1856 (19 & 20 Vict., c. 97)
- Supreme Court of Judicature Act*, 1873 (36 & 37 Vict., c. 66)
- Real Property Limitation Act*, 1874 (37 & 38 Vict., c. 57)
- Trustee Act*, 1888 (51 & 52 Vict., c. 59)

The first four of these statutes were received as part of the law of Upper Canada in 1792. Insofar as they were to remain the law of Ontario, they were, with the exception of the *Common Informers Act*, 1588, incorporated in 1902 into the *Administration of Justice Act*. (See R.S.O. 1897, c. 324, ss. 38-44.) The relevant provision of the *Common Informers Act*, 1588 was incorporated in 1904. (See 4 Edw. VII, c. 10, s. 20.) The other English provisions were copied, almost in their entirety, by the local legislature. (See S.U.C. 1834, c. 1; S.U.C. 1837, c. 3; S.C. 1847, c. 5; S.C. 1850, c. 61; S.C. 1853, c. 121; S.C. 1863, c. 45; S.O. 1874, 2nd Sess., c. 16; S.O. 1881, c. 5; S.O. 1891, c. 19.) A table showing, on a section by section basis, the English legislation on which the present Ontario statute is founded is set out in Appendix A.

In 1910, the forerunner of the present Ontario statute was passed. It was an amalgamation of the various general statutory provisions dealing with limitations which were then law in this Province. (See S.O. 1910, c. 34.)

Since 1910, *The Limitations Act* has been amended on a number of occasions, but only in minor respects. (See S.O. 1916, c. 24, s. 10; 1922, c. 47; 1926, c. 21, s. 37; 1939, c. 25; 1949, c. 5; and 1956, c. 40.)

No major overhaul of this legislation has been undertaken in Ontario. Furthermore, there has been a proliferation of special statutory limitation periods. There are now over sixty statutes which contain provisions of this kind. Some twenty of these deal with actions which would otherwise have been subject to *The Limitations Act*: these invariably establish a shorter period for bringing the action. Such provisions are usually enacted for the benefit of some particular class of institutions or persons. Among the most noteworthy of these are *The Highway Traffic Act* (R.S.O. 1960, c. 172, s. 147), *The Municipal Act* (R.S.O. 1960, c. 249, s. 443 (2)), and *The Medical Act* (R.S.O. 1960, c. 234, s. 43). Chapter V deals with the problem of special limitation periods.

D. PROBLEMS ARISING UNDER PRESENT LAWS

Due largely to their having remained static for so long, Ontario's limitation laws have become out of touch with current needs. The following problems have arisen:

1. The present limitation periods are inappropriate to modern conditions;
2. There are difficulties with regard to the time at which limitation periods begin to run, and with respect to the extension of time;
3. There are far too many special limitation periods;
4. Some of the language in the present statute is archaic;
5. Only some provisions of the present statute apply to the Crown; and
6. Under current land transaction procedures and land use, there appears to be little need to provide for the creation of easements and *profits-à-prendre* by prescription.

In this Report, the Commission has made recommendations that should lead to a solution of these problems.

E. GENERAL APPROACH OF THE COMMISSION

In examining the problems under the existing legislation, the Commission initially decided that there would be merit in using the model act of the Conference of Commissioners on Uniformity of Legislation in Canada as a basis for discussion, with a view to considering its suitability for adoption in Ontario. However, the Commission soon found that the

model act, most of which was drafted some forty years ago, did not contain some of the better features of limitations reform, which subsequently had been developed elsewhere. While there is much to be said for achieving uniformity among the various provinces in this field, the Commission concluded that the model legislation should not be followed if there was, in the view of the Commission, a better alternative.

In conducting its study, the Commission looked at developments in other common law jurisdictions. Particular benefit was gained from the recent experience in Alberta, Manitoba, the United Kingdom, New South Wales and New York.

At the request of the Commission a research paper on limitations was prepared by John D. Honsberger, Q.C. Mr. Honsberger also attended a number of Commission meetings at which various aspects of limitations were discussed. The Commission is most grateful to him for his assistance.

The legal research staff of the Commission undertook a survey of the Ontario statutes in order to compile a list of special provisions relating to time. The result of their study is set out in Appendix J.

Various treatises were, of course, helpful. In particular, the Commission found the following useful:

Anger and Honsberger, *Canadian Law of Real Property*,
 Brunyate, *Limitation of Actions in Equity*,
 Falconbridge, *Essays on the Conflict of Laws*, 2nd ed.,
 Falconbridge, *The Law of Mortgages of Land*, 3rd ed.,
 Franks, *Limitation of Actions*,
 Preston and Newsom, *Limitation of Actions*, 3rd ed., and
 Weaver, *Limitations*.

In addition, volume 20 of the second edition and volume 24 of the third edition of Halbury's Laws of England, and volume 13 of the Canadian Encyclopaedic Digest (Ontario), 2nd ed., contain expositions of the law of limitations. Two articles were of special assistance:

Developments in the Law—Statutes of Limitation, 63 Harvard Law Review 1177 (1950),

J. D. Falconbridge, The Disorder of the Statutes of Limitation, 21 Canadian Bar Review 669 and 786 (1943).

This Report does not include a draft bill. The drafting of a new limitations statute should await the acceptance of the recommendations contained in the Report. In any case, this work will be a complex and time-consuming task and a matter for legislative counsel. The Commission will gladly lend whatever assistance it can, should it be requested to do so, to legislative counsel or whomever might be assigned the responsibility of drafting a new statute.

F. REFORM ELSEWHERE

The Conference of Commissioners of the Uniformity of Legislation in Canada in the early stages of their existence undertook a study of limitations and approved a model *Limitation of Actions Act* in 1931. Amendments to the model act were approved by the Conference in 1932 and 1944. Since those amendments the uniform legislation has remained unchanged. It may be found at page 199 of "Model Acts Recommended from 1918 to 1961 Inclusive" published by the Conference in 1962; it is also set out in Appendix C of this Report. In 1966, however, the Conference agreed to examine their model statute and referred it to the Alberta Commissioners for study. The following year the Alberta Commissioners submitted their report and were then asked to report at the 1968 meeting of the Conference with a draft statute for discussion of policy. The Alberta Commissioners made a further report at the 1968 meeting. Their suggestions for change are mainly directed towards personal injury, property damage and professional negligence actions. In this Report, the model statute is referred to as the Uniform Act.

The Uniform Act was adopted by Manitoba and Saskatchewan in 1932, Alberta in 1935, Prince Edward Island in 1939, the Northwest Territories in 1948 and the Yukon Territory in 1954. In some instances the adoption was with modifications. Manitoba replaced the earlier version of the model act with the revised one in 1946.

Both Alberta and Manitoba recently have revised their limitations legislation. (See S.A. 1966, c. 49, and S.M. 1967, c. 32.) These legislative changes are contained in Appendices D and E respectively.

In England, substantial reforms have also been made in the past thirty years as a result of four law reform studies. (See Law Revision Committee, Fifth Interim Report, 1936, Cmd. 5334; Report of the Committee on the Limitation of Actions, 1949, Cmd. 7740; Report of the Committee on Limitation of Actions in Cases of Personal Injury, 1962, Cmd. 1829; and Law Reform Committee, Fourteenth Report, 1966, Cmd. 3100. These four Committees are referred to as the Wright, Tucker, Davies and Pearson Committees, being named after their respective chairmen.) The first three studies have been followed by legislative action (see *Limitation Act, 1939*, 2 & 3 Geo. VI, c. 21; *Law Reform (Limitation of Actions &c.) Act, 1954*, 2 & 3 Eliz. II, c. 36; and *Limitation Act, 1963*, 11 & 12 Eliz. II, c. 47). The English legislation is set out in Appendix F.

The Scottish Law Commission is currently reviewing the subject. In November, 1968, it circulated a memorandum containing certain tentative proposals. (Memorandum No. 9, Prescription and Limitation of Actions.)

The New South Wales Law Reform Commission published a report in October, 1967, in which the Commission made a thorough study of the general law of limitations. Although its report is based largely on

the recent English experience, it contains a number of interesting innovations. The draft statute recommended in the Report is contained in Appendix G.

American state law on limitations has its foundations, generally-speaking, in the old English law. In some instances, the state law on limitations is in the same archaic condition as that in Ontario. In New York, however, a major revision of civil procedure, including limitations, came into effect in 1963. (See McKinney's Consolidated Laws of New York, Book 7B, pp. 38-399.) The New York provisions are set out in Appendix H. Recent improvements in the limitations laws of Illinois and Wisconsin have been noted with interest and the law in California has also been examined.

The American National Conference of Commissioners on Uniform State Laws promulgated a Uniform Statute of Limitations in 1939 but no state adopted it and it has been regarded as a failure. The Conference withdrew it from "active promulgation" in 1966. It is nevertheless of interest and is set out in Appendix I.

CHAPTER II

ACTIONS GOVERNED BY THE LIMITATIONS ACT

S U M M A R Y

- A. INTRODUCTION
- B. ACTIONS TO WHICH THE ACT EXPRESSLY APPLIES
- C. ACTIONS TO WHICH THE ACT APPLIES BY ANALOGY
- D. ACTIONS OUTSIDE THE SCOPE OF THE ACT
- E. RELATIONSHIP OF LACHES TO THE ACT
- F. CONCLUSIONS

A. INTRODUCTION

The Limitations Act does not govern all causes of action: it lays down particular periods for specific kinds of actions. There are, of course, the many special limitation provisions contained in other statutes. Only some of these special provisions apply to kinds of actions which would otherwise be governed by the Act. Special limitation periods are discussed in Chapter V.

There are certain matters for which no limitation period is laid down. In some of these, the courts will apply the Act by analogy. In others, the Act has no application at all.

The provisions of the Act, in the main, were designed to impose periods within which common law actions might be brought. Generally-speaking, equitable claims were outside the scope of the Act. It does, however, contain express provisions with respect to certain equitable claims. For example, some claims against a trustee for breach of trust are made subject to the enactments. (See s. 43.)

Where the Act does not expressly apply to a claim for enforcement of an equitable right, the doctrine of laches applies. ("Laches" or undue delay was allowed as a defence in the courts of equity. "Equity aids the vigilant and not the indolent".) Laches may also be applied in situations where an equitable remedy is sought with respect to a legal right expressly covered by the Act. On the other hand, the doctrine of laches is not considered relevant to equitable claims expressly governed by the Act.

The application of the Act by analogy is part of the law of laches and only occurs with respect to equitable claims. In instances where an analogy can be drawn, equity adopts the Act as a yardstick. Where

no analogy can be drawn, then no particular period governs and the test is whether or not there has been undue delay in the particular circumstances.

The Uniform Act and the New York law both contain a "catch-all" provision by which all causes of action not specifically provided for must be brought within six years. If consideration is to be given to the adoption of a similar provision in Ontario, it is important to know what matters are outside the present legislation and would be swept into a "catch-all" provision. Furthermore, since some of these matters are equitable in nature, the role of laches should be examined.

B. ACTIONS TO WHICH THE ACT EXPRESSLY APPLIES

"Action" is defined in section 1 of the Act as including "an information on behalf of the Crown and any civil proceeding".

Part I of the Act deals with proceedings in respect of real property. It also contains provisions applying to legacies. Part II deals with certain actions against trustees and Part III with "personal" actions.

Under Part I, time limits are imposed in respect of the following:

- (a) Entries, distress and actions to recover land or rent and, in the case of the Crown, to "revenues", "issues" and "profits"; (See ss. 3 and 4.)
- (b) Actions to redeem by a mortgagor where a mortgagee is in possession; (See s. 19.)
- (c) Actions to recover out of land or rent any sum of money secured by mortgage, lien or other charge; (See s. 23.)
- (d) Actions to recover any legacy, whether or not it is charged upon land; and, (See s. 23.)
- (e) Actions of dower. (See s. 25.)

Part I also provides for a maximum period for which arrears may be claimed in regard to:

- (a) rent,
- (b) dower,
- (c) interest in respect of sums charged on land or rent, or in respect of any legacy. (See ss. 17, 18 and 27.)

The provisions dealing with prescriptive easements and *profits-à-prendre* are also contained in Part I.

In Part II, certain actions against trustees are made subject to the Act. (See s. 43.)

Under Part III, the following are governed:

- (a) actions for a penalty, damages or sum of money given by statute; (See s. 45 (1) (h) and (m).)
- (b) actions on a specialty, judgment or recognizance; (See s. 45 (1) (a), (b), (c) and (k).)
- (c) actions by a mortgagee against a grantee of the equity of redemption under section 18 of *The Mortgages Act* (R.S.O. 1960, c. 245); (See s. 45 (1) (l).)
- (d) actions in tort; (See s. 45 (1) (g), (i) and (j).)
- (e) actions in contract not under seal; (See s. 45 (1) (g).)
- (f) actions for an award where the submission is not under seal; (See s. 45 (1) (d).)
- (g) actions for an escape; (See s. 45 (1) (e).)
- (h) actions for money levied on execution; and (See s. 45 (1) (f).)
- (i) actions for account, or for not accounting. (See s. 46.)

It appears that an action for escape is one which would be brought by a judgment creditor against a sheriff or other person for the escape of a judgment debtor in their custody. (See Halsbury, 3rd ed., vol. 1, p. 26 and C.E.D. (Ont.), 2nd ed., at p. 286. See also s. 6 of *The Sheriff's Act* (R.S.O. 1960, c. 371). There was also a common law offence of "escape" which was committed by a prisoner escaping custody and persons allowing prisoners to escape. See Halsbury, 3rd ed., vol. 10, at pp. 635 *et seq.* But see ss. 124-129 of the *Criminal Code*.)

The actions of account expressly referred to in section 46 probably are only those which would have been brought at common law and do not include equitable actions of account. Section 46 was originally enacted to remove the exception of merchants' accounts contained in section 3 of *The Limitation Act, 1623*. Section 3 provided, *inter alia*, that all common law actions of account, except merchants' accounts, must be brought within six years after the cause of action arose. When section 46 first became law, it clearly only referred to merchants' accounts. Owing to minor changes in punctuation and wording, the section now is ungrammatical and appears on the surface to apply to all actions of account, although it is unlikely that the changes were intended to produce the latter result. (See Halsbury, 2nd ed., p. 596, fn. (e).)

C. ACTIONS TO WHICH THE ACT IS APPLIED BY ANALOGY

The relationship of the Act to claims for equitable relief is somewhat obscure. However, the Act is applicable to equitable claims by way of analogy and as part of the doctrine of laches, in two situations:

1. Where an equitable right claimed corresponds to a legal right; and
2. Where an equitable remedy claimed is in aid of or in connection with a legal right.

(See Brunyate, *Limitation of Actions in Equity*; Franks, *Limitation of Actions*, Part IV; Preston and Newsom, *Limitation of Actions*, 3rd ed., Chapter X; Weaver, *Limitations*, Chapter VI; *Snell's Principles of Equity*, 26th ed., at pp. 37 *et seq.*)

Under the first category, the following equitable proceedings have been said to be governed by the Act:

- (1) an action by an underpaid against an overpaid *cestui que trust*, as being similar to the common law action for money had and received;
- (2) an action to set aside a gift made under undue influence, as being similar to the common law action for money had and received;
- (3) an action for an equitable debt (a company sued a former director for a sum received by the latter as a bribe to use his influence), as being similar to a common law action for debt;
- (4) an action for damages for misrepresentation (based on the misrepresentation of facts made in the prospectus of an intended company), as similar to a common law action for deceit.

(See Franks, at p. 245.)

The number of situations to which the Act is applied in this way is very small. The Act is not applied where the equitable action has been intentionally excluded from its express provisions. For example, the right of a mortgagor to redeem mortgaged personal property has not been made subject to the Act by analogy to provisions relating to real property.

The second category of cases where the Act is applied by way of analogy are those where the remedy sought is in aid of a legal right. This category includes proceedings for specific performance, rescission, account and an injunction. A claim for specific performance, for example, assumes the existence of a contract on which an action could be brought at law.

D. ACTIONS OUTSIDE THE SCOPE OF THE ACT

The Act only governs those actions to which it applies either expressly or by analogy. It does not, of course, govern where another enactment prescribes a special limitation period for a particular kind of action. (See s. 45 (2).)

Generally-speaking, the Act is not relevant to what may be called "federal causes of action" brought in the provincial courts. For example, it contains no provisions relating to criminal proceedings, divorce and nullity suits, or patent and copyright actions. (Limitations on certain criminal proceedings and in actions for a penalty or forfeiture under federal statutes are provided for in sections 693, 48, 133, 184 and 627 of the *Criminal Code*. Note also section 24 of the *Copyright Act* (R.S.C. 1952, c. 55), which sets a three year period for infringement of copyright actions. No limitation period for actions for infringement of patent is

prescribed by the *Patent Act* (R.S.C. 1952, c. 203); however, regard will be had to equitable principles in such actions.) On the other hand, *The Limitations Act* does apply to actions on bills of exchange and promissory notes, and for interest, although these are matters over which the federal parliament has exclusive jurisdiction under heads 18 and 19 of section 91 of the *British North America Act, 1867*. For the purposes of the Act, they are treated as actions on a simple contract or debt (unless, in the case of interest, it was due under a specialty). It may well be that the federal parliament could, by virtue of section 91 impose limitation periods for actions on bills of exchange and promissory notes, and for interest, and thus displace the Act in these areas.

The extent to which the Act could be made applicable to federal causes of action generally, and the desirability of such application, will be discussed later.

There are a variety of other actions to which the Act does not apply. These include:

1. an action by a *cestui que trust* against a trustee based on fraud or a fraudulent breach of trust (see s. 43);
2. an action against a trustee where a voluntary trust has been created for the payment of the debt of another, although the action against the debtor has become statute-barred (see *Re Alice Kerr* (1911), 2 O.W.N. 1342);
3. where the debtor and the creditor are the same person, e.g., executor and beneficiary (see *In Re Yates* (1902), 4 O.L.R. 580);

(NOTE: The extinction of right provision recommended in Part A of Chapter VII would have the effect of extinguishing the creditors' rights in the above two situations. See *infra*. at p. 202.)

4. an action for enforcing by foreclosure or otherwise any charge upon personal property (see Brunyate, at p. 21; Franks, at pp. 150 and 155);
5. an action for redeeming a mortgage of personal property;
6. proceedings by and, it seems, against the Crown, except:
 - (a) an entry, distress or action for the recovery of land or rent, or other rights respecting real property (see s. 3);
 - (The Act does not, however, apply to waste or vacant land of the Crown or to a road allowance vested in the Crown, a municipal corporation or other public body (see s. 16).)
 - (b) actions for a penalty, damages or a sum of money given by a statute (see s. 45 (1) (l) and (m)); and,

7. where judicial review is undertaken by bringing prohibition, *certiorari*, *quo warranto*, declaratory judgment, injunction or *mandamus* proceedings.

E. RELATIONSHIP OF LACHES TO THE ACT

The limitation of actions in equity, whether by statute or under the equitable rules of laches and acquiescence, is one of those corners of English law which still remain a little obscure.

Brunyate, *Limitation of Actions in Equity*

The courts of equity always refused to give relief to a person who had not been reasonably diligent in asserting his rights by the commencing of proceedings. Delay sufficient to bar the remedy is called "laches".

As mentioned earlier, the application of the Act by analogy is part of the doctrine of laches. Where no analogy can be made, however, the period necessary to constitute laches in a specific matter will depend on the particular circumstances.

There is a very close relationship between laches and the equitable defence of acquiescence. The latter simply entails conduct by which a person has shown himself indifferent to the violation of his rights. Lapse of time may be a significant factor in showing that there has been acquiescence, but nevertheless there may be acquiescence without delay. On the other hand, the concept of acquiescence appears to lie behind the defence of laches. However, there are circumstances where laches may exist without any element of acquiescence being present. *Snell's Principles of Equity* (26th ed. at p. 705) states:

The areas of acquiescence and laches thus overlap, yet neither is wholly included in the other.

Section 2 of the Act provides:

Nothing in this Act interferes with any rule of equity in refusing relief on the ground of acquiescence, or otherwise, to any person whose right to bring an action is not barred by virtue of this Act.

This means that, although a person's right to bring an action has not yet been barred by the Act, he may have lost his right to bring it on the ground of acquiescence or "otherwise".

The extent of the operation of section 2 is not altogether clear. Although from its wording it appears to apply to *The Limitations Act* as a whole, it originated in the *Real Property Limitation Act, 1833* (adopted in Upper Canada in 1834), which encompassed only actions in respect of land. Its place in the present enactment, in Part II, which deals with real property actions, dates from the consolidation in 1910.

The same provision in the English legislation remained in the *Real Property Limitation Act, 1833* until its repeal in 1939. *The Limitation Act, 1939*, contains the following general provision:

29. Nothing in this Act shall affect any equitable jurisdiction to refuse relief on the ground of acquiescence or otherwise.

Section 2 of the 1939 statute lays down the statutory periods for personal actions but contains the following qualifying provision in subsection (7):

This section shall not apply to any claim for specific performance of a contract or for an injunction or for other equitable relief, except in so far as any provision thereof may be applied by the Court by analogy in like manner as the corresponding enactment repealed by this Act has heretofore been applied.

Generally, it seems that acquiescence will always be a defence. It makes no difference whether the Act expressly governs the matter or not. Acquiescence before the period has run will be a good defence.

Laches, on the other hand, may be a defence in certain instances. Where the Act expressly applies to an equitable claim, delay short of the full period is clearly irrelevant. However, where the Act is applied by analogy, the position is not as well-defined. There is a disagreement among the writers as to whether laches may be a good defence where the equitable right is analogous to a legal right. The better view would seem to be that laches can be pleaded. The application of the Act by analogy is, after all, part of the law of laches and should be regarded as setting only an uppermost limit.

Delay short of the statutory period is also relevant in those situations where an equitable remedy in aid of a legal right is being sought and the Act is applicable by analogy. Thus, in claims for specific performance or rescission of a contract, no claim can be made after six years but laches far short of the six year period may bar the granting of the equitable relief. However, there are exceptions. The right to a final injunction in aid of a legal right will not be lost so long as the legal right is not statute-barred. The same applies where accounts in aid of a legal right are sought. (See Franks, at p. 244 *et seq.*; Preston and Newsom, at p. 256 *et seq.*; Snell, at p. 28 *et seq.*; Weaver, at p. 327 *et seq.*; Brunyate, at p. 257 *et seq.*.)

There is no doubt that, when reform of limitation laws is being undertaken, careful consideration should be given to the role that acquiescence and laches should play and the consequences that changes would have on these equitable defences.

F. CONCLUSIONS

The Commission believes that, as a general principle, there should be specific time limits for the bringing of all actions and proceedings. The only exception the Commission would make is with respect to proceedings by way of judicial review of the exercise of statutory powers. Lapse of time should not have the indirect effect of making an *ultra vires* act *intra vires*. Generally, however, the policy which underlies limitation statutes applies to the commencement of every other kind of action. (Even actions for fraudulent breach of trust should be so governed, although time should not run until the discovery of the fraud. These actions are discussed in Division 6 of Part C of Chapter III.) The statute proposed by the Commission should expressly provide that all

causes of action are governed by it, excepting only the proceedings by judicial review referred to above and those actions subject to some special limitation period. This objective can be achieved by having a "catch-all" provision. Such a provision is contained in the Uniform Act, and the limitation laws of New York, California, Illinois and Wisconsin. The proposed "catch-all" provision is discussed in Division 7 of Part C of Chapter III of this Report. A "catch-all" provision would also remove the obscurities of the law, resulting from the application of the Act by analogy.

Once all actions are expressly governed, there will be no need for the operation of the doctrine of laches except insofar as the granting of certain equitable remedies in aid of legal rights is concerned. Claims for specific performance or rescission of a contract, for example, should remain subject to the defence of laches. Acquiescence, on the other hand, should continue to be a valid defence to the full extent that it now is.

The proposed statute should, therefore, make it clear that the equitable defence of acquiescence may still be relied on to defeat an action in the same way as at present. It should also provide that laches continue to be a defence to the extent that it now is where equitable remedies are being sought in aid of a legal right. These qualifying provisions should not, of course, be confined to real property actions but be applicable to all proceedings in which these equitable defences can now be raised. It should therefore be in general terms, similar to section 29 of the 1939 English act or section 9 of the draft statute for New South Wales. Neither of those statutes, however, contains a "catch-all" provision. Consequently, the proposed Ontario qualifying provision must make it clear that the equitable defences are to operate notwithstanding the imposition of specific time limits by the proposed act.

Accordingly, the Commission recommends that:

1. *As a general principle, the bringing of every kind of action should be subject to some specific limitation period;*
2. *The statute proposed by the Commission should establish limitation periods for all causes of action, except for:*
 - (a) *those actions which the Commission later recommends should remain the subject of special provisions imposed by other statutes, and*
 - (b) *proceedings by way of judicial review of the exercise of statutory powers;*
3. (a) *Acquiescence should remain available as a defence to the extent that it now is; and,*
 - (b) *Laches should only be available as a defence with respect to those claims for equitable relief in aid of a legal right which may now be defeated by laches.*

CHAPTER III

THE PERIODS OF LIMITATION

S U M M A R Y

- A. INTRODUCTION
- B. A COMPARISON OF ONTARIO WITH OTHER JURISDICTIONS
 - 1. The Present Ontario Act
 - 2. The Uniform Act
 - 3. England
 - 4. Alberta
 - 5. Some American States
- C. THE PERIODS PROPOSED BY THE COMMISSION
 - 1. General
 - 2. Contracts and Torts
 - 3. Specialties and Recognizances
 - 4. Judgments and Orders
 - 5. Penalties
 - 6. Trusts
 - 7. "Catch-all" Provision

A. INTRODUCTION

Questions related to the period of limitation may be grouped as follows:

- 1. What are the appropriate lengths of period with respect to particular kinds of actions?
- 2. What classification of actions should be made so that the appropriate period can be readily ascertained?
- 3. What flexibility should there be in the application of limitation periods:
 - (a) As to when the period should begin to run,
 - (i) where one of the parties is under a disability, e.g., is a minor or mentally incapable, and
 - (ii) where the person wronged does not know of the wrong?
 - (b) As to when the period should be interrupted when a person becomes mentally incapable after the period has started to run?

(c) As to when the period should be extended,

(i) generally, and

(ii) to allow sufficient time for the making of counter-claims, set-offs, and the adding of additional parties to the proceedings?

4. To what extent should the special statutory limitation periods, of which there are approximately sixty, be brought in under the general limitation periods?

The first two questions are dealt with in this and the following chapters. The matters of postponement, suspension and extension of periods are treated in Chapter VI and the question of special statutory periods in Chapter V.

B. A COMPARISON OF ONTARIO WITH OTHER JURISDICTIONS

The various general limitation periods in the existing Ontario legislation, the Uniform Act, Alberta, England and some American states are set out below. Following that are the recommendations of the Commission for the periods to be contained in the proposed statute.

1. *The Present Ontario Act*

There are, at present, six general limitation periods in Ontario. The periods are one, two, four, six, ten and twenty years. They apply to matters as set out below:

<i>Twenty Years</i>	<i>Section</i>
1. An action against a person for rent payable on an indenture of demise,	45 (1) (a)
2. An action on a bond or other specialty (except on a mortgage covenant to repay),	45 (1) (b)
3. An action upon a judgment or recognizance.	45 (1) (c)
<i>Ten Years</i>	
1. An entry or distress or an action for recovery of land or rent (except by the Crown, which has 60 years),	4 (see also s. 22)
2. An action to recover out of any land or rent any sum of money charged upon the land or rent,	23 (1)
3. An action to redeem a mortgage when the mortgagee obtained the possession or receipts of the profits of any land or the receipts of any rent comprised in his mortgage,	19
4. An action on a covenant in an indenture of mortgage to repay the money secured by the mortgage,	45 (1) (k)

Section

5. An action by a mortgagee against a grantee of the equity of redemption under section 18 of *The Mortgages Act*, 45 (1) (l)
6. An action of dower, 25
7. An action to recover any legacy (whether charged against land or not). 23 (1)

Six Years

1. An action on an award where the submission is not by specialty, 45 (1) (d)
2. An action for an escape, 45 (1) (e)
3. An action for money levied on execution, 45 (1) (f)
4. An action for trespass to goods or land, simple contract or debt grounded upon any lending or contract without specialty, debt for arrears of rent, detinue, replevin, or upon the case other than for slander, 45 (1) (g)
5. An action of account, or for not accounting, 46
6. Arrears of:
 - (i) rent, 17 (1)
 - (ii) interest in respect of any sum charged on or payable out of any land or rent, or in respect of any legacy, 17 (1)
 - (iii) dower, 27
 (or any damages in respect of such arrears).

Four Years

- An action for assault, battery, wounding or imprisonment. 45 (1) (j)

Two Years

1. An action for a penalty, damages, or a sum of money given by any statute to the Crown or the party aggrieved, 45 (1) (h)
2. An action upon the case for words.

One Year

An action for a penalty imposed by any statute brought by any informer or person authorized to sue (not being the person aggrieved).

2. *The Uniform Act*

The Uniform Act establishes four general limitation periods, of one, two, six and ten years. It gives no special treatment to specialties.

<i>Ten Years</i>	<i>Section</i>
Proceedings (including actions, entry, distress) for the recovery of land,	16
Proceedings for the recovery of money secured against land, or payable under an agreement for sale,	12, 13
An action to redeem a mortgage of real or personal property, where the mortgagee has possession of the property or is in receipt of the profits of any land contained in the mortgage,	31
Actions by mortgagees for foreclosure, sale or recovery of any mortgaged property,	32
Actions or other proceedings by vendors and purchasers in respect of agreements for the sale of land,	34, 35
Proceedings by a seller under a conditional sale of goods contract,	37
Actions on a judgment or order for the payment of money.	3 (1) (i)
 <i>Six Years</i>	
Actions for trespass or injury to real property or chattels, whether arising from an unlawful act or from negligence,	3 (e) (i)
Actions for the taking away, conversion or detention of chattels,	3 (e) (ii)
Actions for the recovery of money (except in respect of a debt charged upon land), whether recoverable as a debt or damages or otherwise, and whether on a recognizance, bond, covenant or other specialty or on a simple contract,	3 (f) (i)
Actions for an account or for not accounting,	3 (f) (ii)
Actions grounded on fraudulent misrepresentation,	3 (g)
Actions grounded on accident, mistake or other equitable ground of relief,	3 (h)
Any other action not in this Act or any other Act specifically provided for,	3 (j)

	<i>Section</i>
Arrears of rent and interest in respect of any sum charged on or payable out of any land or rent, or in respect of any legacy.	14 (1) (b)

Two Years

Actions for penalties, damages, or a sum of money given by any statute to the Crown or the person aggrieved,	3 (1) (b)
Actions of defamation whether libel or slander,	3 (1) (c)
Actions for trespass to the person, assault, battery, wounding or other injury to the person, whether arising from an unlawful act or from negligence,	3 (1) (d) (i)
Actions for false imprisonment, malicious prosecution, or seduction.	3 (1) (d) (ii) (iii) and (iv)

One Year

An action for a penalty imposed by any statute brought by any informer or person authorized to sue (not being the person aggrieved).	3 (1) (a)
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3. *England*

The English Act of 1939 contains three general limitation periods consisting of two, six and twelve years. These are set out below:

<i>Twelve Years</i>	<i>Section</i>
Actions to recover land,	4 (3)
Actions to recover money secured by mortgage or other charge on property or to recover the proceeds of the sale of land,	18 (1)
Foreclosure actions in respect of mortgaged personal property,	18 (2)
Redemption actions where mortgagee in possession,	12
Actions on specialties,	2 (3)
Actions on judgments,	2 (4)
Actions by which a claim is made to an interest in the personal estate of a deceased person.	20

<i>Six Years</i>	<i>Section</i>
Actions founded on simple contract or tort,	2 (1) (a)
Actions to enforce a recognizance,	2 (1) (b)
Actions to enforce an award, where the submission is not by an instrument under seal,	2 (1) (c)
Actions to recover any sum recoverable by virtue of any enactment, other than a penalty or forfeiture,	2 (1) (d)
Actions for an account,	2 (2)
Arrears of interest on judgment debts, sums secured by land and legacies, and arrears of rent or dower.	2 (4), 18 (5), 20, 17

Two Years

Actions to recover any penalty or forfeiture.	20 (5)
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In 1954, the 1939 legislation was amended to provide a *three year* limitation period for actions for negligence, nuisance or breach of duty where damages were claimed in respect of personal injuries to any person. The amendment provided that the new period should apply whether the duty breached existed in contract, by statute or in tort. "Personal injuries" were defined as including any disease and any impairment of a person's physical or mental condition. Thus, in England, there are now four general limitation periods, consisting of two, three, six and twelve years.

4. *Alberta*

Alberta, which had adopted the Uniform Act in 1935, made two significant changes in respect of general limitation periods in 1966. These were:

1. It reduced from six years to two years, the limitation period applicable to:
 - (a) actions for trespass or injury to real property or chattels, whether direct or indirect and whether arising from an unlawful act or from negligence or from breach of a statutory duty, and
 - (b) actions for the taking away, conversion or detention of chattels.
2. Actions for damages in respect of injury to the person were to be governed by the two-year limitation period, whether such actions were founded on tort, breach of contract or breach of statutory duty.

5. *Some American States*

An examination of the limitation laws of New York, Illinois, California and Wisconsin shows the wide variety in limitation periods existing in the United States.

The table below gives a comparison of the periods in these states governing the main causes of action.

	<u>California</u>	<u>Illinois</u>	<u>New York</u>	<u>Wisconsin</u>
Recovery of land	5	20	10	20 (except if occupation under a claim of title when 10 years)
Contracts			6	6
Written	4	10		
Oral	2	5		
Injury to property	3	5	3	6
Personal injuries, except those based on assault and battery	1	2	3	3
Personal injuries, based on assault and battery	1	2	1	2
Libel and slander	1	1	1	2
"Catch-all" period for actions not provided for	4	5	6	10

C. THE PERIODS PROPOSED BY THE COMMISSION

1. General

In making recommendations as to desirable periods, there are a number of considerations to be borne in mind.

First, different periods may be appropriate to different causes of action. What is a suitable period to govern personal injury actions may not be practical with respect to actions to recover land or for breach of contract.

Second, simplicity should be an objective. The public and the legal profession will be served well if the limitations laws are capable of being understood. In this respect, it is desirable to have as few limitation periods as practically possible. The fewer the periods, the less likely there are to be difficulties classifying actions in order to determine which period applies to them. Furthermore, the public, either directly or through the legal profession, will be more likely to know their rights. From the same point of view, it is important to reduce to the greatest extent possible the multiplicity of special limitation periods that have arisen, a matter which is dealt with in Chapter V.

Third, a case can be made for a general shortening of the periods of limitation from their present length. Since the present periods were first established, means of communication and transportation have so improved that these factors no longer have the same importance they once had. Life generally and commercial activity in particular move at a much faster pace and, thus, there is much to be said for encouraging the disposition of disputes more quickly.

Fourth, if there is to be a general preference for shorter periods, there is likely to be greater difficulties with respect to potential plaintiffs who do not know they have a cause of action. A safety-valve for such cases can be provided in the form of a procedure by which the period can be extended. The Commission recommends such a procedure in Chapter VI. Without this safety device, it may well be that a longer period should be prescribed for some of the matters which the Commission proposes should be governed by the two-year period.

Fifth, if special limitation periods, such as the one-year periods under *The Highway Traffic Act* and *The Medical Act*, are to be eliminated, the matters governed by those special periods would come under the new general provisions. The general provisions would in all of these situations provide a longer period. In order not to change existing litigation patterns in these areas more than is necessary, it is obviously reasonable that the general limitation periods should not be farther removed from the existing special limitation periods than is essential to the working of the proposed legislation. Thus, if either a two or three-year period would be appropriate for personal injury actions, this consideration is an argument for selecting the shorter period.

Sixth, there is some merit in maintaining a particular period that is well-known, particularly if it is common to other jurisdictions. Take, for example, the six-year period for contract and debt actions, which was originally established by the Statute of Limitations in 1623 and has been in effect in Ontario since the Province of Upper Canada was created. A four, five or seven-year period might be equally appropriate to such actions. Nevertheless, the six-year period is one that is well-recognized and is still the governing period in contract actions in all the other common law provinces of Canada.

Taking these considerations into account, the Commission has come to the conclusion that the present six general limitation periods should be reduced to four and that some twenty of the special limitation periods should be removed.

The Commission recommends in this and the following Chapter that there should be four general limitation periods, of two, six, ten and twenty years. These would apply to actions as follows:

Six Years

All actions not otherwise provided for.

Twenty Years

Actions on judgments.

Ten Years

- Actions:
1. On deeds,
 2. To recover land,
 3. With respect to charges on property (both real and personal), and
 4. For serious breaches of trust.

Two Years

- Actions:
1. For damages for injury to the person or property (whether based on contract, tort, or statutory duty),
 2. For malicious prosecution,
 3. For seduction,
 4. For defamation, and
 5. For the recovery of penalties imposed by statute.

The various causes of action are dealt with in the remainder of this Chapter, with the exception of actions to recover land and respecting charges on property. These last-mentioned are the subject of Chapter IV.

2. Contracts and Torts

The two main common law classifications are dealt with together because to some extent they overlap. With the growth of the tort of negligence, it is possible in some situations to sue for breach of contract or in tort for breach of duty. On the other hand, there are situations where damage has been caused by careless conduct but the action can only be brought in contract. Professional negligence cases are, perhaps, the best example of litigation coming in this latter category. There, the duty has been said to exist in contract but not in tort. (See, for example, the Ontario Court of Appeal decision in *Schwebel v. Telekes*, [1967] 1 O.R. 541; see also *Rowswell v Pettit*, [1968] 2 O.R. 81.)

The application of limitations to contract actions will be dealt with first.

(i) Contract Actions

It has already been pointed out that the six-year period for contract and debt actions has been in effect in Ontario since the Province of Upper Canada was created. The six-year period is well-known and is still the governing period in all the other common law provinces in Canada. It is the period designated in the Uniform Act.

The Law Revision Committee (the Wright Committee) recommended in 1936 in England that six years should be the governing period for all actions founded in simple contract or tort as it was

the period which at present applies to the majority of such actions and is familiar to the general public.

(See Cmd. 5334 at p. 9.) The English legislation of 1939 implemented this recommendation, although personal injury actions were later, in 1954, made subject to a three-year limitation period. Thus, six years remains the period applicable in England to contracts.

The New South Wales Law Reform Commission, in its 1967 report, recommended the retention of the six-year period for contractual claims.

The State of New York has retained the six-year period for contract actions in its recently revised Civil Practice Law and Rules. (See s. 213.)

There are, of course, many varieties of contract. There may be a simple oral contract for minor plumbing repairs or a detailed written contract for the construction of a 50-storey office building. The purchase of goods, whether by the householder at the supermarket or the factory owner of complex machinery, is always the subject of contract. So is the borrowing of money, whether it is a small loan from a friend or from a bank, or a complicated multi-million dollar financing by a commercial concern. The arrangement that the patient has with his doctor, or the client with his lawyer, is based, in law, on contract.

It is clear that a period of less than six years might well be suitable to breaches of some contracts. On the other hand, a longer period may be more appropriate in others. A longer period, ten years, is later recommended for contracts under seal. Consequently, if parties to a contract wish to avail themselves of the ten-year period it is simply a matter of agreeing that the contract should be executed under seal and ensuring that this is done.

Some jurisdictions, such as California and Illinois, provide for shorter periods for oral contracts, presumably on the grounds that oral contracts are more likely to deal with less important matters than written ones, and that evidentiary problems are more likely to occur with the passage of time.

There is one group of contracts which has become subject to a shorter limitation period in virtually all American jurisdictions. These are contracts for the sale of goods. Article 2-725 of the Uniform Commercial Code (which was prepared under the joint auspices of The American Law Institute and the National Conference of Commissioners on Uniform State Laws) provides that a four-year period should apply to actions for breaches of such contracts. The parties to the contract may agree to reduce the period to not less than one year, but may not extend the period beyond the four years. The affixing of a seal to such contracts does not alter the period. (See Article 2-203.) The Uniform Commercial Code was adopted in 51 American jurisdictions (all but Louisiana) by 1967 and all but a few accepted the four-year limitation period. (See Uniform Laws Annotated, 1967 Supplement, Uniform Commercial Code, at p. 137.)

It may well be that, in the field of commerce, a shortening of the period from six to four years, would produce some beneficial result by speeding up the settlement of disputes. However, the Commission does not think the benefit to the commercial world would be so significant as to itself dictate a change to the shorter period.

A shortening of the contract period would mean that creditors would have to bring suit against delinquent debtors earlier in order to protect their rights. These debtors should be given every reasonable opportunity to discharge their obligations without having added to these the additional costs of what may have been an unnecessary lawsuit.

Now does the Commission consider that there is much advantage to be gained in subjecting oral contracts to a shorter period than written ones as has been done in some of the American states. The balance on this point is with simplicity. The same period should govern oral and written contracts. It is true that the Commission later recommends that a ten-year period apply to contracts under seal. However, although the Commission may appear to be inconsistent on the question of simplicity, it believes that different considerations apply to specialties. These are dealt with later on.

As mentioned at the beginning of this part, the six-year period for contracts is well-known and well-established in this and other common law jurisdictions. The Commission sees no compelling reason for making a change.

(ii) *Tort Actions*

There are many different kinds of tort actions. These include actions for:

1. Libel and slander,
2. Deceit,
3. Seduction,
4. Malicious prosecution,
5. False imprisonment,
6. Trespass to the person, assault and battery,
7. Trespass to property,
8. Conversion,
9. Detinue,
10. Negligence,
11. Nuisance,

12. Breach of a statutory duty (although it is not settled that this is a tort),
13. Inducing a breach of contract, and
14. Civil conspiracy.

Under the present limitations act tort actions are provided for, as follows:

- | | |
|---|---------|
| 1. Trespass to goods or land
(See s. 45 (1) (g).) | 6 years |
| 2. Detinue
(See s. 45 (1) (g).) | 6 years |
| 3. Upon the case other than for slander
(See s. 45 (1) (g).) | 6 years |
| 4. Assault, battery, wounding or imprisonment
(See s. 45 (1) (j).) | 4 years |
| 5. Upon the case for words
(See s. 45 (1) (i).) | 2 years |

This classification of torts, and these periods, come from the Statute of Limitations of 1623 and have been in effect in this jurisdiction since 1792. The classifications are based on the old forms of actions, long ago abolished, and are obviously hopelessly out of touch with modern tort law. Negligence and nuisance, for example, have grown out of the old actions on the case, a term which is now almost archaic. Thus, negligence actions are subject to a six-year period, which is undoubtedly too long in most circumstances, particularly in personal injury cases. This state of affairs has been a major factor in special interest groups seeking and obtaining individual treatment by the legislature.

The simplest solution to the classification problem would be to deal with all torts as one group to be subject to the same limitation period. An overall simplicity could be achieved if the same period applied to contracts. This was the recommendation made in 1936 by the Law Revision Committee (the Wright Committee) in England and it was implemented in the 1939 Act, which concisely provided that a six-year period should apply to:

. . . actions founded on simple contract or on tort. (See s. 2 (1) (a).)

However, the six-year period proved to be too long for personal injury actions. In 1949, the Tucker Committee recommended that actions for personal injuries, whether founded on contract or tort, should be governed by a two-year period. Its Report referred to "the desirability of such actions being brought to trial quickly, whilst evidence is fresh in the minds of the parties and witnesses". (See para. 22.) The Report also recommended an extension of time procedure for exceptional

cases, which would permit judicial discretion to be exercised so as to allow actions to be brought after the two-year period had expired but before six years had passed from the accrual of the cause of action.

The Tucker Committee rejected a suggestion that all torts should be reduced to three years and recommended that there should in general be uniformity between tort and contract with regard to the period of limitation. It pointed out "the difficulty in many cases of distinguishing between actions founded on tort and actions founded on contract". (See paras. 19 and 21.)

Actions for trespass to the person, false imprisonment, malicious prosecution, and defamation of character should not, in the view of the Tucker Committee, be regarded as personal injuries for the purpose of the three-year period but remain subject to the six-year period. (See para. 23.)

In 1954, legislation gave effect to the Tucker Committee recommendations, except that a three-year period, rather than two, was set for personal injury actions and no provision was made for extension. "Personal injuries" were defined as including any disease and any impairment of a person's physical or mental condition. The actions made subject to the three-year period were those for:

. . . negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under a statute or independently of any contract or any such provision) where the damages claimed . . . consist of or include damages in respect of personal injuries to any person. . . .

Although this provision would not appear to include personal injury actions where the injury was caused intentionally (i.e., by trespass to the person, assault and battery) rather than negligently, it has recently been held that the term "breach of duty" is wide enough to include trespass to the person. (See *Long v. Hepworth*, [1968] 3 W.L.R. 1299; see also *Franks*, at pp. 196-197.)

Finally in 1963, as a result of the Davies Committee Report of the previous year, legislation was enacted in England to provide for an extension of time where a person was unaware of the material facts on which he could base an action for personal injury.

The New South Wales Law Reform Commission, after reviewing the English reforms, rejected, at least for the time being, the shorter period for personal injury actions. It recommended that the six-year period should apply to all tort actions, as well as those founded in contract. The Report states (at para. 349):

We are not aware of any reasons for the reduction of the present period of six years to three years in New South Wales, except the obvious reason that it would be convenient to those who are likely to be defendants, or likely to be called upon to indemnify defendants, in such actions. The question must remain open for recon-

sideration when, as we propose to do, we consider the very large number of enactments fixing special periods of limitation for actions against public authorities and other persons. At present we do not recommend that the limitation period of six years for actions for damages for personal injuries be reduced.

The New South Wales Commission is in the process of bringing out a second report dealing with such particular matters as special limitation periods.

The Uniform Act has been under review since 1966. From 1944 until the present time it has provided for a two-year period for actions for personal injuries, false imprisonment, malicious prosecution, seduction, and libel or slander. For property damage and all other torts, the period was six years. (See s. 3 (1), (c), (d), (e) and (j).)

The wording of the personal injury provision, clause (d) of section 3 (1), is not satisfactory as the distinction between the trespass torts and negligence is not clearly made.

Two of the provinces which have adopted the Uniform Act, Alberta and Manitoba, have recently made significant changes in the tort provisions of their versions of the uniform legislation. As a result the Conference of Commissioners on Uniformity of Legislation in Canada has been reviewing this and other provisions of the Uniform Act.

In 1966, Alberta amended its limitations statute so that the two-year period applied to property (both real and personal) damage actions. In making this change, the act was revised so that a special part, Part IX, was established for "Tort and Related Actions". After listing the various torts which were to be governed by the two-year period, the statute then provided that in every action where damages for personal injury were claimed, Part IX should apply, "whether the action is or may be founded on tort, breach of contract or breach of statutory duty". This is, of course, an attempt to follow the approach of the 1954 English legislation.

In 1967, Manitoba reduced from six years to two the period governing actions for personal property damage. Manitoba, however, left actions for real property damage to be governed by the six-year period. Under the new Manitoba legislation, the two-year period is to apply to personal injury actions, whether arising in tort, contract or breach of statutory duty. For this purpose, such actions include malicious prosecution, seduction and false imprisonment, as well as the trespass torts. The 1967 Manitoba amendments also include the 1963 English extension provision.

Owing to the changes made in the Alberta act in 1966, the Conference of Commissioners on Uniformity at its meeting that year decided to review the Uniform Act and asked the Alberta Commissioners to study the subject and report to the Conference. The Alberta Commissioners reported to the 1967 meeting, largely recommending changes following the 1966 Alberta amendments. The report pointed out one problem

those amendments did not deal with. The limitation period may begin to run at different times, depending on whether the action is in contract or tort. In contract, it begins from the breach and in tort from the time the damage is done. Pointing out the unsatisfactory state of the case law, the Alberta Commissioners stated that a plaintiff should not have the option to sue in tort or contract. They recommended "consideration of a provision that would make it clear that claims for personal injuries or property damage are in tort".

The Alberta Commissioners did say that their province's reduction to two years from six for property damage claims may be "debatable". They could think of cases of hardship and gave as an example a bailment to a warehouseman where the goods are damaged without the knowledge of their owner.

The Conference discussed the report of the Alberta Commissioners and asked them to report again at the 1968 meeting with a draft for discussion of policy.

At the 1968 meeting, the Alberta Commissioners recommended, *inter alia*:

1. A "flat" two-year period for all torts,
2. It was unnecessary to list specific torts,
3. A separate part of the Uniform Act should deal with tort claims,
4. A provision similar to section 52 of the Alberta statute (added in 1966), which was apparently intended to have the effect of treating all actions for personal injuries, whether founded on tort or breach of contract or statutory duty, as if they were tort actions,

(The Alberta Commissioners stated it might be preferable, instead of a provision like section 52, to say directly that a claim for bodily injury is in tort or that it arises on damage even when it is founded on contract or statutory duty.)

5. Property damage actions should be dealt with in the same way as personal injuries under the preceding recommendation, and
6. Actions for professional negligence should sound in tort rather than contract.

(This last recommendation was made to ensure professional negligence cases would be covered by the provisions (or similar provisions) recommended for personal injuries and property damage claims. Most professional negligence cases would be claims of that sort, but not all. Furthermore, it may be that particular kinds of professional negligence are subject, as they are in Alberta, to special limitation periods.)

The Conference postponed taking action on the Report.

This Commission considers the problems raised here as the most difficult, and perhaps the most vital, in the Report.

It would indeed be a happy, and convenient, conclusion if the Commission were able to recommend that one period should govern all tort and contract actions. However, it is certain, and this is borne out by experience elsewhere, that some tort actions, at least, must be governed by a shorter period than is generally suitable for contract claims.

If some torts require a shorter period, then the next simplest solution might well be to make all torts subject to the shorter period, as the Alberta Commissioners have recommended. This suggestion is dealt with after the Commission has considered what particular torts are suited to a shorter period.

This Commission believes that a two or three-year period is clearly desirable for all personal injury actions. It considers that the present six-year period for negligence, insofar as it results in injuries to the person, is too long. It also believes that, if periods appropriate to modern conditions are established for all kinds of actions, as well as personal injury claims, there will no longer be any justification for many of the special limitation periods that now exist. The most noteworthy of these are the one-year limitation periods in *The Highway Traffic Act* and *The Medical Act* and the three-month period in *The Municipal Act*. The special limitation periods are separately discussed in Chapter V. However, since all the special periods which apply to personal injury actions are one year or shorter and since many have been established for some time, the Commission recommends the two-year period as preferable to three.

The two-year period should apply to all personal injury claims, whether arising in negligence, nuisance, the trespass torts, breach of contract, or breach of statutory or other legal duty. It should also apply to actions by near relatives for damages for wrongfully causing death brought under *The Fatal Accidents Act* (R.S.O. 1960, c. 138).

There are other torts which, in the view of the Commission, should be governed by the two-year period. These are closely related to those giving rise to personal injury claims. They are false imprisonment, seduction, malicious prosecution, and libel and slander.

A more difficult group of torts are those which give rise to property damage or loss. These include trespass, conversion, detinue, negligence and nuisance. Alberta made these subject to the two-year period in 1966 and the Alberta Commissioners, after some hesitance in 1967, recommended to the Conference of Commissioners on Uniformity in 1968 that the two-year period apply to them, along with all other torts.

A substantial proportion of property damage cases arise out of motor vehicle accidents on the highway. If the special limitation period now applying to these cases were abolished and property damage claims were not subject to a two-year period, then the time for bringing such actions would be increased from one year to six. The Commission

considers this undesirable. It does not make sense for different periods to apply to personal injuries and property damage both occurring out of the same circumstances. In fact, the considerations which militate for a shorter period for personal injury actions also apply to property damage in these situations. These kinds of actions should be brought while evidence is relatively fresh, liability in most cases being determined on what the parties or witnesses can recall.

As with personal injury claims, the two-year period should apply to property damage claims, whether they are founded in tort, breach of contract or breach of statutory or other duty.

The Alberta Commissioners themselves raised difficulties with subjecting property damage claims to the two-year period. First, in their 1967 report, they stated that they could see that there would be cases of hardship, giving as an example a bailment to a warehouseman during which the goods bailed are damaged by the warehouseman long before their owner knows. (See 1967 Proceedings of the Conference on Uniformity, at p. 175.) This problem can be met by having the extension period, which the Commission subsequently recommends, apply to property damage claims as well as personal injury claims. The extension provision would come into play whenever the plaintiff was unaware of the material facts on which an action could be based. The situation will also be ameliorated by the later recommendation of the Commission that, where the action could lie in contract, time should nevertheless not run from the time of the breach but from the time of damage, as is the case in most tort claims.

Second, the Alberta Commissioners in their 1968 Report referred to the problem of where a contract contained

. . . a special clause and the claim might be based on it rather than on the common law duty. This might occur in a bill of lading, or building contract. We are hopeful that the claim can be readily categorized one way or the other. A claim under a building contract, if founded on negligence, should be in tort but a claim on a covenant in the contract to build a roof that would last 10 years would be in contract.

It may be that the Alberta Commissioners are being too hopeful. If the roof deteriorates so that the covenant is broken, does not this become a property damage claim, founded in contract, to which the two-year period would apply? If the roof falls in, it is hard to say that it would not be a property damage claim arising in contract. The problem posed here is not as severe as it might appear if one bears in mind the recommended provisions dealing with the extension of time and time running from damage rather than breach.

A partial solution to this kind of case might be to exempt contracts under seal from the provision confining property damage actions, whether based on contract or tort, to the two-year period. Thus, parties, if they so wished, could bind themselves to an extended period (ten years) of liability by contracting under seal. The Commission, however, makes no recommendation on this point.

Third, the Alberta Commissioners also point out in their 1968 Report that, if actions for the conversion of chattels are to be subject to a two-year period, section 45 of the Uniform Act will extinguish the owner's title when that period comes to an end, instead of at the end of six years. The Alberta Commissioners felt this might be harsh. However, they stated:

We could of course leave conversion at six years but this spoils the symmetry of our general two-year provision.

This Commission does not attach the same importance to symmetry. It believes that different considerations apply to the wrongful taking of chattels than to the damage of chattels by negligence, nuisance or trespass. The Commission recommends in Chapter VII that lapse of time should extinguish the right. Such a provision would have the same effect as section 45 of the Uniform Act. It would be unjust in a good many situations for a person's title in his personal property to be extinguished only two years after a wrongful conversion. It is therefore recommended that actions for the wrongful detention and conversion should remain subject to the six-year period.

This Commission believes that the extension provision generally makes it possible to apply the two-year period to property damage claims. Without the extension provision, the Commission would be in favour of having these claims governed by the six-year period. Furthermore, if there is an extension provision, there would be no strong argument for distinguishing between real and personal property, as Manitoba has done, by having the six-year period apply to the former and the two-year period to the latter. (The Manitoba extension provision only applies to personal injury actions.)

Having gone so far as to recommend that the two-year period apply to most torts, the Commission has decided against going all the way and rejects the view that all torts should be subject to the two-year period, as recommended by the Alberta Commissioners. Actions for certain torts require a longer time. As mentioned above, two years would be too short for actions for the wrongful detention or conversion of personal property. In civil conspiracy actions, the fact that, or the extent to which, a conspiracy exists often takes time to emerge after the damage is done. Furthermore, it is inconsistent for an action for inducing a breach of contract to be subject to the two-year period, while an action for damages for that breach is subject to a six-year period.

The Commission also rejects the suggestion that a limitations statute requires an action to be brought in tort rather than contract, when the facts are such that the action could be founded in either. The Alberta Commissioners made this proposal at one stage.

The suggestion is made owing to two difficulties:

1. A plaintiff, who could sue either in tort or contract, could choose in contract and thus have six years in which to sue; and

2. Even if such a claim is subject to the same period (e.g., two years), whether it is brought in contract or tort, that period may begin to run at different times, at the time of the breach in contract and at the time of damage (usually) in tort.

These two difficulties can best be overcome by other means than requiring the plaintiff to sue in tort. It should not be the function of a limitations statute to interfere in this way with substantive law. The first difficulty may be met by simply stating that the shorter period will govern whether the action is founded on tort, breach of contract, or breach of statutory or other duty.

The second difficulty can be resolved by providing that time shall run in personal injury and property damage cases, whether arising in tort, contract or otherwise, from the time that damage occurs. A similar provision can be made to apply to professional negligence actions not falling in these categories. The Commission makes a recommendation to this effect in Part B of Chapter VI.

The Commission's recommendations in respect of the limitation periods which should be applicable to contract and tort actions may be summarized:

Two Years

1. *Personal injury and property damage actions whether or not such actions are based on contract, tort, or statutory or other legal duty,*
2. *Actions under The Fatal Accidents Act, and,*
3. *Malicious prosecution, false imprisonment, seduction and libel and slander actions;*

Six Years

1. *Actions for the wrongful detention or conversion of personal property, and,*
2. *All other actions in contract (except those arising out of deeds) and tort.*

3. *Specialties and Recognizances*

The term "specialty" is described by Franks (at p. 188) as "an archaic word of somewhat imprecise meaning".

Usually, a specialty is thought to refer to a contract under seal, which, unlike the simple contract, does not require for its validity consideration for a promise. However, an obligation to pay money arising under a statute is also said to be a specialty. Thus, actions for taxes, or for compensation for land expropriated by statute, or for interest charged contrary to statute have been said to be actions on specialties for the purposes of limitations. (Actions to recover penalties,

damages or sums of money given by a statute are the subject of special limitation periods. See s. 45 (1) (*h*) and (*m*) and the 1936 English Report at para. 4.)

Sometimes it has been said that a judgment is a specialty, and, to a lesser extent the term has been applied to a recognizance. (See Weaver, at p. 301, Preston and Newsom, at p. 57, and s. 3 (1) (*f*) of the Uniform Act.) These latter applications of "specialty" must be regarded as doubtful.

Historically, contracts are classified in three categories:

1. Contracts of record,
2. Contracts under seal, usually referred to as a specialty,
3. Simple contracts.

"Contract of record" applies to judgments and recognizances, which are entered in the record of court proceedings. Where money was owing under a judgment or recognizance, the law implied a debt, which arose from the entry on the record and not from agreement between the parties. The liability to pay is independent of consent and thus the application of the term contract to judgments and recognizances is not a satisfactory one.

The recognizance is an obligation acknowledged before some court or judge to secure the performance of some act, the obligation being entered on the court record. If the act is not performed, the recognizance is forfeited and the person giving it becomes a debtor to the Crown for the sum he bound himself to pay. The procedure by which forfeited recognizances are dealt with is set out in *The Estreats Act* (R.S.O. 1960, c. 124).

So far as limitations are concerned, considerable clarification would result if the term specialty were not used and the various matters treated separately, as follows:

1. Judgments,
2. Recognizances,
3. Contracts under seal,
4. Obligations arising under statute.

Different considerations apply to each of these matters. Limitation statutes usually deal with judgments and recognizances as separate topics and the remaining two under the head of specialties. The 1936 English Report on Limitations recommended that contracts under seal and obligations arising under statute be treated separately and differently. It recommended that the former be made subject to a twelve-year period and the latter to a six-year period. (See para. 5.) However,

the 1939 Act did not follow this recommendation and instead treated both matters as "specialties" to be governed by a twelve-year period. (See s. 2 (3).) The 1939 Act has been subsequently criticized on this account (See Franks, at p. 188 and the New South Wales Report, paras. 107 and 113). The New South Wales Report, however, preferred "deed" to the "instrument under seal" recommended by the 1936 English Report on the ground that the latter expression

might be thought to extend to an instrument intended to be no more than a simple contract but executed under the seal of one or more of the parties.

(See paras. 63 and 113, and ss. 11 (1) and 16 of the proposed bill.)

In this Report, judgments and orders are dealt with as a distinct topic.

Recognizances, too, should be regarded separately. *The Estreats Act* lays down the procedure by which a forfeited recognizance would normally be realized upon. It is probably correct to say that the taking of steps under *The Estreats Act* on a forfeited recognizance does not amount to an "action" under *The Limitations Act*, although "action" is defined in the latter statute as including "any civil proceeding". In any event, so far as proceedings under *The Estreats Act* are concerned, there would seem to be no likelihood of that Act being brought into play after any lapse of considerable time from the forfeiture. The statute contemplates early enforcement. (See ss. 1 and 2.) However, apart from *The Estreats Act*, it appears a recognizance may still be enforced by an ordinary action, although in practice this rarely, if ever, occurs. (See Franks, at p. 168; New South Wales Report, at para. 106.)

The present period governing recognizances in Ontario is twenty years, which is unnecessarily long. The Uniform Act (s. 3 (1) (f)) and the English legislation of 1939 (s. 2 (1) (b)) both cut the period down to six years. The New South Wales Report recommends a six-year period.

This Commission considers the six-year period to be sufficiently long.

This Commission also agrees with the 1936 English Report and the New South Wales Report that the term "specialty" be dropped and that contracts under seal and actions grounded on statute be treated separately. Certainly these are very different matters.

As mentioned earlier, actions for taxes, for compensation for land expropriated by statute, and for interest charged contrary to statute have been regarded as actions on specialties, since the subject matter of these suits is a debt created by statute. (See Weaver, at p. 301.) The 1936 English Report (at pp. 7-8) drew attention to difficulties that have arisen in deciding whether the action arises out of the statute or outside the statute. There are instances where, although the statute is necessary for the cause of action, the action nevertheless arises, at least to some extent, because of a legal relationship outside the statute. For example, it may depend on a contract. If the courts so find, the limitation period may be six years rather than twenty.

The Uniform Act provides that the six-year period govern specialties as well as simple contracts. Thus, under the Uniform Act, those actions grounded on statute which are regarded as specialties would be subject to a six-year period. The 1936 English Report recommended that such actions be subject to a six-year period, although the 1939 Act treated them as "specialties" and subject to the twelve-year period. The New South Wales Report recommends the six-year period, and was in agreement with the English Report that an action for money under a statute should be treated in the same way as an action founded on simple contract. (See para. 107.)

Accordingly, the Commission recommends that actions grounded on statute be subject to a six-year period.

The final question to be disposed of with respect to specialties, is whether contracts under seal should be subject to a longer period of limitation than simple contracts. At the present time in Ontario, contracts under seal are subject to a twenty-year period and simple contracts to a six-year period.

At one time the placing of one's seal on a document was regarded as indicating the solemnity with which the promises had been made. How relevant is this to-day, particularly having regard to modern commercial operations?

The Conference of Commissioners on Uniformity of Legislation in Canada came to the conclusion that no distinction was warranted and, consequently, the Uniform Act provides that contracts, whether under seal or not, be governed by the six-year period. Those provinces that have adopted the Uniform Act have not found it necessary to make any change.

The 1936 English Report, on the other hand, found (at p. 9):

. . . the present period of twenty years is too long, but that there should be a longer period for these actions than for actions on simple contract. There ought, we think, to be a method by which rights can be protected from the operation of statutes of limitation for a considerable period. Money is frequently advanced on bonds or debentures or similar instruments, which is not expected or intended to be repaid for a long period and on which payment of interest is waived or suspended. It would be an inconvenience to insist that the lender should call in his loan within six years or lose his rights. Again, there are occasional cases where the nature of a transaction is such that claims arising from it will not become known for many years It should at least be possible for a prudent man to secure his position by executing an instrument under seal.

The Report then recommended a twelve-year period for instruments under seal. The 1939 Act so provided. In selecting twelve years for the period, it was said to be desirable to fix the same period for an action on a covenant (promise under seal), whether in a mortgage deed, or a deed without security, as an action for the recovery of land.

The New South Wales Report agreed (para. 114) with the English approach of giving special treatment to contracts under seal, although the Australians preferred the use of "deed" to "instrument under seal". They also recommended the twelve-year period.

American jurisdictions are by no means consistent on this point. Wisconsin, like Ontario, has a twenty-year period for sealed instruments and a six-year period for other contracts. New York has a twenty-year period to recover principal and interest due on bonds and a six-year period for other sealed instruments and for contracts generally. Illinois has a ten-year period for actions on bonds and written contracts. California sets a six-year period for most corporate obligations held by the public and a four-year period for written contracts.

The Uniform Commercial Code, which has been adopted by all the American states but one, contains a four-year limitation period for contracts of sale governed by the Code, whether those contracts are under seal or not. All but a few of the adopting states have this provision in their respective Codes.

This Commission agrees with the English and New South Wales Report that there should be a longer period for actions on contracts under seal than for ordinary contracts. However, in the case of Ontario, the period should be ten years, which is the period applicable to actions for the recovery of land in this province.

Thus, the Commission recommends that the period for contracts under seal should be ten years and for simple contracts six years.

As mentioned above, the New South Wales Report (paras. 113 and 114) preferred the use of "deed" to "instrument under seal". That Report points out that "instrument under seal" might be thought to apply to an instrument intended to be no more than a simple contract but executed under the seal of one or more of the parties. (For a discussion of contracts under seal, see the judgment of Laskin, J. A. in *Royal Bank of Canada v. Kiska*, [1967] 2 O.R. 379.)

It may well be that every contract under seal should not be governed by the longer period. What if only one of the parties signs under seal? Is every contract executed by a corporation under its corporate seal to be regarded as subject to the longer period? Put another way, is it not possible for a corporation executing a contract under its corporate seal to enter into a simple contract?

The test should be the intention of the parties. Was it intended that it be treated as a deed? Accordingly, the Commission agrees with the New South Wales recommendation that the term "deed" be used rather than contract or instrument under seal.

The Commission therefore recommends:

1. *Actions on recognizances should be subject to a six-year limitation period;*

2. *The term "specialty" should not be used in the proposed statute;*
3. *Actions for obligations arising out of statutes should be subject to a six-year limitation period; and*
4. *Actions arising out of deeds should be subject to a ten-year limitation period.*

4. *Judgments and Orders*

The present limitation period in Ontario for bringing actions on judgments is twenty years. The period in the Uniform Act is ten years and in England it has been twelve years for nearly a century. There is no period laid down in the Ontario statute for actions on orders. The Uniform Act, however, treats judgments and orders in the same way.

Some judgments and orders do not need to be enforced as the judgment or order itself is all that the party obtaining it requires. For example, a judgment determining status does not call for enforcement. There is nothing further to be done. On the other hand, many judgments and orders require the payment of money, the transfer of property, or the doing of some other act, or the abstaining from the doing of some act.

Where a judgment requires enforcement, the party entitled to the benefit of the judgment may try and enforce it by the taking of execution, attachment of debt or other proceedings.

Once the twenty-year period has run in Ontario, no further action may be taken to enforce the judgment. (Part payment or acknowledgment will restart the period running as in the case of ordinary debts.) Thus, once the period has passed, an application for leave to issue execution or to renew an expired writ of execution will be statute-barred. However, if at the end of the period there was an unexpired writ of execution outstanding, such a writ may be renewed indefinitely (so long as it is never allowed to expire) since no application to the courts is necessary. Renewal of an unexpired writ is purely an administrative matter and does not entail an "action".

In the case of judgment debts, the judgment creditor can bring an action on his judgment to protect his position. However, he must do this before the twenty-year period has run. If he obtains a fresh judgment, time will start to run from the date of the new judgment. He can safeguard his position indefinitely in this fashion. This is a rare procedure, as judgment debts on which no payment or acknowledgment has been made for twenty years have usually been long forgotten.

There are three categories of actions on judgments:

- (1) actions on foreign judgments,
- (2) proceedings, amounting to "actions", such as an application for leave to issue execution, which are brought to enforce judgments,

- (3) actions on judgment debts, given within the jurisdiction, for the purpose of avoiding the consequences of the statute.

Actions on foreign judgments are not governed by the twenty-year period, but by the six-year period since they are regarded as simple contract debts. If, however, a foreign judgment is registered under *The Reciprocal Enforcement of Judgments Act* (R.S.O. 1960, c. 345), it appears that it will then be governed by the twenty-year period and time would start to run from the date of registration. It is treated as if an action had been brought on the foreign judgment and a judgment obtained. On the other hand, the effect of a registration of an order under *The Reciprocal Enforcement of Maintenance Orders Act* (R.S.O. 1960, c. 346) is to allow proceedings to be taken as if the order had *originally* been obtained in the court of registration or confirmation.

There are a number of problems to be considered:

1. What is the appropriate period for judgments?
2. Should orders be subject to the same period?
3. Is there some point at which the judgment debtor should be free from further pursuit?
4. Once the period has run with respect to a judgment, should the judgment creditor be able to:
 - (i) proceed on a writ of execution which has not yet expired?
 - (ii) renew such writs indefinitely?
5. Should foreign judgments be included within a definition of "judgments" so that they would be governed by the period applicable to judgments?

The Commission has considered these questions carefully and has concluded that:

1. The appropriate period for actions on judgments is twenty years;
2. Orders should be treated in the same way as judgments;
3. Once the twenty-year period has run, no further action should be taken on the judgment, unless there is at that time an unexpired writ of execution outstanding;
4. Once the twenty-year period has run, if there is an unexpired writ of execution outstanding, the judgment creditor should be able to:
 - (i) continue to proceed on that unexpired writ, and
 - (ii) renew such a writ indefinitely, as he now can.
5. Foreign judgments should not be treated as judgments for the purposes of the twenty-year period, but should continue to be treated as simple contract debts, subject to the six-year period.

The retention of the twenty-year period for actions on judgments is based on the belief that judgments deserve special treatment. In the view of the Commission a judgment is something more than a contract debt or a debt due under a specialty. It is a declaration by the court under which the rights of the parties have been determined. Once the time for an appeal has passed, there is no room for dispute. Furthermore, the successful plaintiff cannot be said to have slept on his rights. He has taken action and, as a consequence, recovered judgment. Accordingly, the Commission believes that a longer period should be allowed for actions on judgments than for those on ordinary contract debts or on specialties.

Although judicial orders do not have quite the same formal significance as judgments, the Commission can see no real reason for treating them differently. Orders are made in certain summary proceedings, such as an application for maintenance under *The Deserted Wives' and Children's Maintenance Act* (R.S.O. 1960, c. 105), and on interlocutory applications. Although orders appear to be something less than judgments, they are, on some occasions, treated in the same way. For example, in *The Judicature Act* (R.S.O. 1960, c. 197), "judgment" is defined as including an order for the purposes of that statute. (See s. 1 (k).) In the Uniform Act, actions on a "judgment or order for the payment of money" must be brought within ten years. The Commission believes that judgments and orders should be similarly coupled under the proposed statute.

While the Commission considered actions on a judgment or order should be made subject to a longer period than other actions, it also concluded that there should be a point at which a judgment debtor should be free from the threat of further action. If the twenty-year period has almost run (and this will mean from the date of the last part payment or acknowledgment of the debt in instances where part payment or acknowledgment has been made) the judgment creditor should not be able to start time running afresh by bringing an action on the old judgment and obtaining a new one. If nothing has been done to enforce the payment of the judgment debt for such a long time, this might indicate that the judgment debt had, in fact, been paid. At common law, lapse of time could raise a presumption that a debt had been paid, albeit that the presumption was rebuttable. After the passage of many years, evidence of the payment may have been lost or destroyed. Furthermore, if a judgment debtor has been unable to make a payment for twenty years on a judgment debt, perhaps there is something to be said for giving him a fresh start at this point.

In the State of New York, section 211 (b) of the Civil Practice Law and Rules provides:

(b) *On a money judgment.* A money judgment is presumed to be paid and satisfied after the expiration of twenty years from the time when the party recovering it was first entitled to enforce it. This presumption is conclusive, except as against a person who within the twenty years acknowledges an indebtedness, or makes a payment, of all or part of the amount recovered by the judgment,

or his heir or personal representative, or a person whom he otherwise represents. Such an acknowledgment must be in writing and signed by the person to be charged. Property acquired by an enforcement order or by levy upon an execution is a payment, unless the person to be charged shows that it did not include property claimed by him. If such an acknowledgment or payment is made, the judgment is conclusively presumed to be paid and satisfied as against any person after the expiration of twenty years after the last acknowledgment or payment made by him. The presumption created by this subdivision may be availed of under an allegation that the action was not commenced within the time limited.

The Commission believes a provision along these lines should be contained in the proposed statute. Since the running of the period in this way will prevent the bringing of fresh proceedings on the judgment, this is a further factor in having the twenty-year period for this kind of action rather than a shorter one.

Unexpired writs of execution which are outstanding at the end of the twenty-year period pose a difficult problem. A writ or renewal remains in force for six years. (See Rule 566.) If property had been seized under the writ but was not yet realized upon when the twenty-year period had run, it would clearly be reasonable that the process of execution should continue in such a case. In addition, the fact that the judgment creditor has been sufficiently interested to pursue his rights by having a current writ demonstrates that he has not regarded his claim as stale. It is therefore less likely that there will be evidentiary problems over whether payment had been made previously. Although the case is less strong with respect to writs renewed after the twenty-year period has expired, the latter consideration still applies. The judgment creditor is taking whatever active steps he can. The Commission therefore believes that the present law should remain unchanged in this respect.

Finally, the Commission does not consider that foreign judgments should be treated as judgments for the purpose of limitations. The judgment creditor will have, as he now does, twenty years once he either registers the judgment under *The Reciprocal Enforcement of Judgments Act* or sues on the foreign judgment and obtains a judgment in the Ontario courts. However, either of these procedures must be taken within six years of the obtaining of the foreign judgment. When a judgment debtor emigrates from one jurisdiction to another, it is more probable that evidential problems with respect to payment will arise with the passage of time. Most common law jurisdictions do treat foreign judgments as simple contract debts, separating them from local judgments for limitation purposes. The New South Wales Report, however, recommends that foreign and local judgments be treated alike. The Report (at para. 65) states:

It is better to have a uniform rule for all judgments and to avoid reliance on the fiction that a judgment debtor contracts to pay the judgment debt.

The Commission agrees that fictions should be avoided but it believes that foreign judgments should be governed by a shorter period. The desired result can be achieved by expressly excluding foreign judgments from the meaning of judgments in the proposed statute and allowing foreign judgments to be governed by the six-year catch-all provision.

Thus, the Commission recommends:

1. *The twenty-year period for actions on judgments be retained;*
2. *Orders for the payment of money should be treated in the same way as judgments;*
3. *It should not be possible to sue on a judgment given in the Ontario courts for the purpose of obtaining a fresh judgment;*
4. *Once the twenty-year period has run, no further action should be taken on the judgment, unless there is at that time an unexpired writ of execution outstanding;*
5. *Once the twenty-year period has run, if there is an unexpired writ of execution outstanding, the judgment creditor should be able to, as he now can:*
 - (i) *continue to proceed on that unexpired writ, and*
 - (ii) *renew such a writ indefinitely;*
6. *Foreign judgments and orders should continue to be governed by a six-year period and not be treated in the same way as local judgments: for clarification, however, the proposed statute should expressly exclude foreign judgments from the provision establishing a twenty-year period for local judgments and orders.*

5. Penalties

Section 45 (1) of the present Ontario statute contains, *inter alia*, the following limitation periods:

- (h) an action for a penalty, damages, or a sum of money given by any statute to the Crown or the party aggrieved, within two years after the cause of action arose; and
- (m) an action for a penalty imposed by any statute brought by any informer suing for himself alone, or for the Crown as well as himself or by any person authorized to sue for the same, not being the person aggrieved, within one year after the cause of action arose.

Clause (m), dealing with informers' actions, comes from the *Common Informers Act, 1588*. Clause (h) is based on the provisions of that statute and the English *Civil Procedure Act, 1833*.

The Uniform Act contains both of these provisions. (See s. 3 (1) (a) and (b).)

Clauses (h) and (m) do not bring all actions brought on statutes within their scope, although the former includes "damages, or a sum of money given by any statute to . . . the party aggrieved". The 1936 English Report points out that these words, in England, have been construed very narrowly so as only to include actions for recovering sums in the nature of penalties (see p. 8). There appears to be no law on this point in Ontario. Consequently, there has been little conflict with those actions on statutes which are regarded as specialties. These have already been dealt with under the heading of "Specialties and Recognizances".

Proceedings under *The Summary Convictions Act* (R.S.O. 1960, c. 387) for breach of a provincial law must be brought within six months from the time when the subject-matter of the proceedings arose. (See s. 3 of *The Summary Convictions Act* and s. 693 (2) of the *Criminal Code*.) Summary conviction proceedings under the *Criminal Code* must also be brought within six months, (s. 693 (2)). "Proceedings" for this purpose, under the Code, include summary conviction proceedings which may be brought under all federal statutes, as well as proceedings where a justice is authorized by a federal act to make an order. (See s. 629 (1) (d).) There are other limitation provisions in the Code with respect to certain offences. (See s. 48 as to treason, and ss. 133 and 184 as to certain sexual offences.) In addition, an action by the Crown in civil proceedings to recover a fine or forfeiture must be brought within two years. (See s. 627.)

The Commission does not consider that the problems of limitations for bringing summary proceedings is within the scope of this Report, although the Commission does not find the six-month period unsatisfactory.

Clauses (h) and (m) of section 45 (1) set up a bar in civil actions for the recovery of fines. Such actions are authorized by section 2 of *The Fines and Forfeitures Act* (R.S.O. 1960, c. 143).

It is rare for civil actions to be brought for this purpose, either by the Crown or by the informer. Usually a period of imprisonment is prescribed in default of payment of the fine. (See s. 694 (2) of the *Criminal Code* and s. 3 of *The Summary Convictions Act*.) In some situations, proceedings can be taken to collect the fine or penalty without first obtaining a civil judgment. (For example, against corporations under s. 12 of *The Summary Convictions Act*.)

A representative list of statutes under which the informer is entitled to part of the fine are set out in Appendix A of Chapter 59 of the Report of the Royal Commission Inquiry into Civil Rights. That Report recommends that all fines under provincial legislation should be paid entirely to the Province and that informers should not be entitled to any share. (See p. 914 of the Report.) The abolition of the informer's share is a long overdue reform. No private person should have a pecuniary interest in securing a conviction.

If the recommendation of the Civil Rights Commission is followed in this respect, a special limitation period for informers' actions would be superfluous. Even if the recommendation is not adopted, there seems little warrant for having such a special limitation period. There would seem to be no good reason why a two-year limitation period should not cover all actions for the recovery of fines and penalties. In fact, these actions occur so infrequently that there is a good deal to be said for not providing specially for them and leaving them to be covered by the six-year "catch-all" provision. However, this Commission recognizes that because of the nature of the claims on which such actions are based, a considerably shorter period should govern, even if the number of these actions which would be brought is very small.

Accordingly, this Commission recommends:

1. *All civil actions for the recovery of fines and penalties be subject to a two-year period.*
2. *The language of the provision replacing clauses (h) and (m) of section 45 (1) make clear that only fines and penalties are to be covered by it, the references to "damages or a sum of money given by any statute" to be omitted.*

6. Trusts

(a) General

The extent, if any, to which a trustee who commits a breach of trust should be entitled to rely on limitations statutes is a special problem. Express trustees owe such a high obligation to carry out their responsibilities that, at one time, they received no protection whatsoever in the way of limitations. This old equitable rule is perpetuated, subject to certain qualifications, in section 44 (2) of *The Limitations Act*. In this respect, some constructive trustees have been treated in the same way as express trustees.

Generally, a trustee is liable for breach of trust, although some protection is given him under *The Trustee Act* (R.S.O. 1960, c. 408). (See sections 1 (q) and 17 to 35.) For example, the court may relieve him from liability for a technical breach of trust. When he has no statutory protection, the trustee will be liable whether he acted in bad or good faith. If he honestly makes a mistake as to the validity of the terms of the trust and, as a result, pays to the wrong person, he will be personally liable to whoever was properly entitled.

Trustees, and also executors and administrators, can safeguard themselves in cases where they are in doubt as to how to administer estates by applying to the Supreme Court for direction. (See section 60 of *The Trustee Act*.)

The Limitations Act refers to express trusts in sections 24, 43 and 44. An express trust is one that comes into existence when the person creating it has clearly expressed his intention of establishing it. The classification of other kinds of trusts is a matter on which the learned

writers are not in agreement. Underhill, for example, groups all trusts, other than express trusts, under the head of constructive trusts. Keeton divides this group into implied, resulting and constructive trusts: however, he treats resulting trusts with implied trusts, although he seems to think there is an argument for classifying them with constructive trusts. Scott divides non-express trusts into resulting trusts and constructive trusts. These various kinds of trusts are explained below, in order to consider whether there is any justification for continuing the special treatment afforded to express trusts.

Implied

Here, in the absence of a clearly expressed intention, the court will presume an intention to create a trust from the conduct of the parties. For example, X purchases property from Z in the name of Y (i.e., X supplies the purchase price and Z, at the request of X, transfers the property to Y). If there is no explanation for the transaction, such as an intention on X's part to make a gift to Y, then it will be presumed Y was to hold in trust for X. (There is a notable exception to this example. If Y is X's wife, there will be no trust in favour of X, as the law presumes a gift in the transfer of property from husband to wife.)

Resulting

These occur in circumstances where a trust results in favour of a person (or his successors) because that person, in establishing a trust, has not either fully or partially disposed of the beneficial interest. For example, X transfers property to Y on certain trusts for Z. If the trusts turned out to be void for some reason, such as uncertainty, then Y would hold the property on a resulting trust for X. (For limitation purposes, a resulting trust is said to be an express trust, as it is regarded as appearing on the face of an instrument.)

Constructive

These are created in equity in the interest of good conscience, without regard to the express or implied intention of the person the law holds to be a constructive trustee. For example, X held a lease from Z in trust for Y. On the expiration of the lease, X tried to renew it on behalf of Y but Z, as he was entitled to do, refused a renewal. Z was, however, prepared to give and, in fact, did give X a lease on his own account. X was said to be a constructive trustee for Y. A trustee must not secure an unauthorized advantage from his position: if he does so, he holds his gain as a constructive trustee.

(b) Executors and Administrators

In Ontario, the position of executors and administrators needs clarification. Owing to the wording of section 2 of *The Devolution of Estates Act* (R.S.O. 1960, c. 106), it may be that the persons holding these offices do so as express trustees, although the case law would indicate otherwise. (See also section 1 (q) of *The Trustee Act*.)

Apart from any statutory provision making them trustees, executors and administrators are not regarded as trustees merely by virtue of their office. (See *Commissioner of Stamp Duties (Queensland) v. Livingston*, [1965] A.C. 694.) The function of the personal representative (i.e., the executor or administrator) is to administer the estate of the deceased. He gathers in the assets, pays off the creditors and distributes the remainder of the estate. While he is in the course of administering the estate, he does not hold the estate as a trustee for the beneficiaries or the next-of-kin. The beneficiaries or next-of-kin have no beneficial interest of a proprietary nature in the estate. Nevertheless they can force the personal representative to carry out his duties. The personal representative is treated as a trustee in some respects. He will be liable for breach of duty if he fails to deal with the assets properly. If he improperly took advantage of his position and made a profit for himself, he would be bound to account for that profit as a constructive trustee.

The position in Ontario is somewhat confused as there is a statutory provision which expressly makes personal representatives trustees. Section 2 of *The Devolution of Estates Act* provides that all the property of the deceased vests in the personal representative as "trustee for the persons by law beneficially entitled thereto". This provision has existed since 1910. Prior to that time, the statute provided that the assets of the deceased merely vested in the personal representative. There was no reference to his being a trustee.

Does section 2 of *The Devolution of Estates Act* mean that in Ontario an executor or administrator is an express trustee? If the answer were in the affirmative, the executor or administrator would not be entitled to the protection of *The Limitations Act* in situations where he had flagrantly failed to carry out his duties. In 1951, Ferguson, J. held in *Re Wilson*, [1952] O.W.N. 101, that an administrator was an express trustee, relying on the words of section 2. Subsequently, however, Gale, J. in *Re Thompson*, [1955] O.W.N. 521 and the Court of Appeal in *Re Baty*, [1959] O.R. 13 held that an executor was not an express trustee. The consequences of section 2 were not considered in either the *Thompson* or *Baty* cases: nor was the *Wilson* case referred to.

(c) *The Existing Law*

Sections 17, 23, 24 and 42 to 44 of the Statute of Limitations relate to trusts. These provisions have been found to be difficult to understand. (See Keeton, *The Law of Trusts*, 8th ed., at pp. 349 to 355; see also Franks, at pp. 62-81.)

The provisions of Part II, containing sections 42 to 44, were adopted from English statutes which had been enacted at different times. Sections 42 and 43 were taken from the *Trustee Act, 1888*, section 44 (1) from the *Real Property Limitation Act, 1833* and section 44 (2) from the *Supreme Court of Judicature Act, 1873*. In England, the provisions were not consolidated until 1939 and then in a revised form. In Ontario, the provisions were contained in separate statutes until the consolidation of 1910.

These provisions may be summed up as follows:

1. Section 42 provides that Part II (i.e., ss. 42 to 44) applies to trusts created by instrument or provincial statute. It would therefore not apply to trusts created in some other way. Thus, certain constructive trusts and, perhaps, implied and resulting trusts might be regarded as outside the scope of Part II. This appears to be inconsistent with section 43 (1) which defines trustees, for the purposes of the section, as including trustees whose trusts arise by construction or implication.

Since Part II applies to trusts created by statute, it would appear that it would apply to executors and administrators by virtue of section 2 of *The Devolution of Estates Act*. Section 43 (1) also defines trustee as including executor and administrator.

2. Section 44 (2) provides that no claim of a beneficiary against a trustee for any property held on an *express* trust shall be barred by any statute of limitations, except as provided in section 43. This is the remains of the old rule of equity that mere lapse of time would never relieve an express trustee from liability for breach of trust.

In addition to section 43, express trustees receive the protection of the statute with respect to legacies secured by express trusts under sections 17, 23 and 24.

3. Section 43 (2) provides that, except in respect of certain serious breaches of trust, in actions against trustees (or persons claiming through them),

- (i) statutes of limitation shall apply as if there were no trust, and

- (ii) if no statute of limitation is applicable on that basis and the action is to recover money or other property, the action shall be treated as if it were an action of debt for money had and received (for which the period is six years).

4. Section 43 (2) does not apply where the claim is:

- (i) based on fraud or fraudulent breach of trust, or

- (ii) to recover trust property on the proceeds thereof retained by the trustee or converted to his own use,

if the trustee is an express trustee. Where he is a constructive trustee, the exception does not apply. Thus, if an executor or administrator is not an express trustee, he may still rely on section 43 (2) to protect himself in the case of a fraudulent breach of trust. In Ontario, as was mentioned earlier, the law as to whether or not an executor or administrator is an express trustee is in an unsatisfactory state.

5. No beneficiary who would be barred by section 43 (2) can be put in a better position by the bringing of an action by an unbarred beneficiary. (See s. 43 (3).) For example, one beneficiary might have been under a disability and thus had a longer time to sue.
6. Where an express trustee improperly conveys land or rent to a purchaser for valuable consideration, the right of the person beneficially entitled to sue the purchaser (and any person claiming through him) for the recovery of the land or rent shall be deemed to have accrued at the time of the conveyance. This is the effect of section 44 (1), which was apparently designed to do nothing more than set the point at which the limitation period (ten years) established in section 4 starts to run in cases of this kind. Section 44 (1) only applies to express trusts of lands and rents. While by its terms it applies to a purchaser for value, such a purchaser would only be liable to the person beneficially entitled if he was not a *bona fide* purchaser of the legal title, without notice of the trust. A *bona fide* purchaser for value, without notice, of the legal title to the land or rent would not be liable to the *cestui que trust* (beneficiary), as such a purchaser acquires a good title.

Although a *cestui que trust* might be barred from suing the purchaser to recover the land or rent after ten years, he would still be able to sue the trustee for damages unless the trustee were protected by section 43 (2). If the action fell within the exception in section 43 (2) (if it was, for example, for a fraudulent breach of trust), the trustee would receive no protection. Otherwise he would.

7. There is a ten-year period for actions by beneficiaries under wills to recover legacies. (See s. 23.) Even if the legacy is charged on land or rent and secured by an express trust, the ten-year period governs. (See s. 24.) Claims for arrears of rent or interest in respect of any legacy, whether charged on land or rent or not (and whether secured by an express trust or not) are restricted to six years of arrears. (See ss. 17 and 24.)

There is no similar statutory limitation period governing actions against administrators of intestates' estates by those entitled to a share of those estates. At one time, however, there was such a period. Copying the provision of an 1860 English statute (23 & 24 Vic., c. 38, s. 13), a twenty-year period was made applicable in Ontario to these actions in 1865. (See S.C., 29 Vic., c. 28, s. 30.) This provision remained in force (see R.S.O. 1897, c. 72, s. 9) until 1911, the year after the various limitations statutes were consolidated: it appears to have been inadvertently omitted in the consolidation. (See S.O., 1910, c. 34 and S.O., 1911, c. 17, s. 43.)

It may be that section 43 (2) 2 provides a six-year bar in such actions against administrators.

(d) *Recommendations*

The limitations law relating to trusts requires both clarification and simplification.

There are a number of basic questions:

1. (a) To what extent, if any, should claims for breaches of trust be subject to limitation periods?
- (b) In particular, should claims for fraudulent breaches of trust be governed by a limitations period?
2. Is there any justification for maintaining any distinction between express and other trusts?
3. Should executors and administrators be treated as trustees for the purpose of limitations?
4. What period or periods would be most appropriate?
5. At what point should the period begin to run when the beneficiary is unaware that he has a cause of action?

Experience in England and New South Wales is helpful in considering these questions.

The 1936 Wright Report in England recommended that the distinction between express and constructive trusts should be abolished and that personal representatives be treated as trustees for limitations purposes. That Report also recommended that claims against personal representatives, whether for land under a devise, personalty under a legacy, or to land or personalty on an intestacy, should be subject to the same period, twelve years. (See paras. 11 and 12.)

Sections 19, 20 and 31 of the *Limitation Act, 1939*, implemented these recommendations. The meaning of "trust" and "trustee" was adopted from the *Trustee Act, 1925*. Section 68 (18) of the latter statute provides:

"Trust" does not include the duties incident to an estate conveyed by way of mortgage, but with this exception the expression "trust" and "trustee" extend to implied and constructive trusts, and to cases where the trustee has a beneficial interest in the trust property, and to the duties incident to the office of a personal representative, and "trustee" where the context admits, includes a personal representative and "new trustee" includes an additional trustee.

The *Limitation Act, 1939* also gave effect to recommendations in the Wright Report with respect to the running of time in claims based on fraud and claims where the cause of action had been fraudulently concealed. (See para. 22 of the Report and section 26 of the Act.) The relevant provision, which applies, of course, to other matters in addition to trusts, postpones the running of time until the discovery of the fraud or when with reasonable diligence it could have been discovered.

The 1939 statute continued to exempt from the application of limitation laws:

- (a) actions for fraud or fraudulent breach of trust to which the trustee was a party or privy; and
- (b) actions to recover from the trustee trust property or the proceeds thereof in the possession of the trustee, or previously received by the trustee and converted to his own use.

All other actions by a beneficiary to recover trust property were to be brought within six years, unless the Act otherwise specified. Section 20 of the statute specified, for example, a twelve-year period for actions by beneficiaries claiming an interest in the personal estate of a deceased person.

The New South Wales Law Reform Commission Report of 1967, although it generally follows the English developments, makes one striking departure from the English position. It recommends that the breach of trust actions traditionally exempted from the limitations statutes should be governed by a twelve-year period. Paragraph 230 of the New South Wales Report states, in part:

We do not think that even a fraudulent trustee should be forever outside the law of the limitation of actions. Under section 47 (1), the defrauded beneficiary would have twelve years to bring his action after the time when he discovers or may with reasonable diligence discover the facts [and] that he has the cause of action: this seems to us to be quite long enough. If no action is brought within this period, we think it fair that the trustee should have the peace which it is the policy of a statute of limitations to give. Under the law as it stands, a beneficiary under no disability and knowing his rights may wait, subject to questions of laches and acquiescence, for thirty or forty or more years and then call upon his trustee (or the executors of the trustee) to meet charges of fraud in relation to events of which all documentary and other evidence is likely to be lost. This is wrong and should be changed.

The Report also recommends that the twelve-year period should apply to:

1. actions to recover trust property by tracing, as where a trustee has paid to the wrong person under a mistake;

(In New South Wales, actions by beneficiaries of the estates of deceased persons to recover by tracing from third persons are now apparently governed by a twenty-year period and actions by other beneficiaries by a six-year period.)

2. actions *in personam* by a beneficiary against a person to whom the trustee has made a wrongful distribution.

(In New South Wales, the present governing period would apparently be six years.)

In both these instances, it is recommended that the period should run from the date of discovery or, when with reasonable diligence, the discovery would have been made.

The Commission is in agreement with the general tenor of the English and New South Wales positions. On the one major point on which these two jurisdictions differ, the question of whether fraud, conversion and retention claims against trustees should remain outside the statute, the Commission has had difficulty in coming to a conclusion. Once a beneficiary is aware of the facts which would form the basis for a claim, there seems to be no reason why he should not be required to sue within some reasonable specified time. (Under the law at present, the trustee can plead laches if the beneficiary delays too long in such a case.) On the other hand, if he is not aware of those facts, should time run against him if he could have discovered them had he been reasonably diligent? Is it fair to place this onus on the beneficiary? The Commission thinks not. A beneficiary should not be required to be reasonably diligent in ensuring that the trustee acts properly. The very nature of a trust pre-supposes a confidence in the trustee. The elderly widow, who is the beneficiary of a trust established under her husband's will, relies on the trustee almost as a friend. She should not be required to be on guard against him. The Commission has concluded, therefore, that claims for serious breaches of trust should be governed by a limitation period, but that time should only run against the beneficiary when he becomes aware of the breach. The limitation period should be relatively long and the Commission recommends ten years.

The Commission therefore recommends:

1. *All actions for breach of trust should be subject to some limitation period;*
2. *There should be no distinction made between different kinds of trusts (i.e., express, implied, resulting and constructive trusts should be treated in the same way);*
3. *Executors and administrators should be treated as trustees for the purposes of limitations;*
4. *Limitation periods should be applicable to actions as follows:*

Ten Years

Actions against the personal representatives of a deceased person for a share of the estate, whether that person left a will or died intestate,

Actions in respect of any fraud or fraudulent breach of trust to which the trustee was party or privy,

Actions against a trustee for the conversion of trust property to his own use,

Actions to recover trust property, or property into which trust property can be traced, against a trustee or any other person,

Actions to recover money on account of a wrongful distribution of trust property, against the person to whom the property is distributed, or his successor.

Six Years

All other actions brought in respect of a breach of trust for which a period of limitation is not prescribed by some other provision of the proposed statute.

(The six-year provision will catch nearly all other breaches of trust. However, there may be other types of proceedings which would be governed by a different period. See Franks, p. 78, fn. 63. An example might be a suit based on a contract under seal, where the breach of contract was also a breach of trust. In that case, the ten-year period applicable to specialties should govern.)

5. Time should not run against a beneficiary with respect to an action

(a) based on any fraud or fraudulent breach of trust to which the trustee was a party or privy, or

(b) to recover from the trustee trust property, or the proceeds thereof, in the possession of the trustee, or previously received by the trustee and converted to his own use

until the beneficiary becomes fully aware of the fraud, fraudulent breach of trust, conversion or other act of the trustee on which the action would be based, the onus of proof of which should rest on the trustee.

Time should not run against a beneficiary in respect of a future interest in trust property until the interest becomes a present interest.

6. A statute-barred beneficiary should not be able to improve his position if another beneficiary, who is not statute-barred, makes a successful claim. (This would mean the retention of the present section 43 (3).)

7. The "Catch-all" Provision

The Uniform Act contains (s. 3 (1) (j)) a six-year provision for

. . . any other action not in this Act or any other Act specifically provided for

In Part D of Chapter II, this Report sets out various matters which are outside the scope of the present limitations statute. These matters would remain outside the legislation recommended by this Commission unless they were specifically dealt with or were covered by some sort of catch-all provision as is contained in the Uniform Act. The Commission does recommend specific coverage for fraudulent breaches of trust and for actions relating to charges on personal property (in both cases ten years).

The Commission concluded in Part E of Chapter II that it would be desirable to have a general provision to cover those matters which are not specifically dealt with. Proceedings by way of judicial review should be excluded. It may well be, of course, that other statutes will prescribe a period for judicial review in a particular matter.

The extent to which proceedings by and against the Crown, federal causes of action, and causes of action arising out of the law of other jurisdictions, should or could be governed by the proposed statute is dealt with in Chapter VII.

If a "catch-all" provision is included in the legislation, it would no longer be necessary for the courts to have to consider whether or not the Statute should be applied by analogy. (See Part C of Chapter II.)

The present English legislation does not include a "catch-all" provision. Nor do the various committee reports of 1936, 1949 and 1962 consider recommending one. Nor does the New South Wales Report.

All the provinces and territories in Canada which have adopted the Uniform Act have included the "catch-all" provision.

All four of the American states whose limitation statutes have been reviewed have a "catch-all". The governing periods are:

California.....	4 years,
Illinois.....	5 years,
New York.....	6 years, and
Wisconsin.....	10 years.

Prior to 1963, the period in New York was ten years. This change has been described as reducing

. . . the residual statute of limitations from 10 to 6 years. This period which governs actions in equity, had always been unnecessarily long. It had created many problems by encouraging tardy plaintiffs whose causes of actions were barred at law to conjure up improbable theories of equity to gain the benefit of the longer statute. Much of this learning will now be rendered academic. (See McKinney's Consolidated Laws of New York Annotated, Book 7B, at p. 243.)

The Commission agrees with the principle of a "catch-all" provision and considers that a six-year period would be appropriate.

In drafting the recommended statute, the Commission believes, in the interests of simplicity, that the provision setting out the appropriate limitation periods should simply state that all causes of action should be subject to a six-year period, unless the Act, or some other Act, expressly provides otherwise. Those actions governed by the two, ten and twenty-year periods would then be set out. This would avoid spelling out, as the Uniform Act now does, a number of actions subject to six-year periods, as well as all the other actions specifically provided for, and then concluding with a "catch-all" period of six years.

The Commission therefore recommends:

All causes of action should be subject to a six-year limitation period except where the proposed statute, or some other statute, has otherwise prescribed.

CHAPTER IV

RECOVERY OF LAND AND CHARGES ON PROPERTY

S U M M A R Y

- A. INTRODUCTION
- B. ACTIONS TO RECOVER LAND
- C. ACTIONS TO RECOVER RENT
- D. ACTIONS RELATING TO CHARGES ON REAL PROPERTY
- E. ACTIONS RELATING TO CHARGES ON PERSONAL PROPERTY
- F. SUMMARY OF RECOMMENDATIONS

A. INTRODUCTION

Actions to recover land and charges on real property are governed by Part I of *The Limitations Act*. There are no provisions in the statute dealing with charges on personal property. Thus, there is now no limitation period respecting foreclosure or redemption actions in respect of chattel mortgages, or the enforcement of liens on personal property.

This Chapter is concerned with actions to recover land and charges on both real and personal property. There are certain provisions in Part I of the present enactment which are reviewed elsewhere in this Report:

- (a) Sections 30 to 35 and 39 to 41 have to do with prescriptive easements and *profits-à-prendre* and are dealt with in Chapter VIII;
- (b) Sections 13, 17 and 19 to 23, insofar as they relate to acknowledgment and part payment, are considered in Part D of Chapter VI;
- (c) Sections 36 to 38, which deal with disabilities, are examined in Division 2 of Part C of Chapter VI;
- (d) Sections 17, 23 and 24, to the extent that they refer to legacies and trusts, are discussed in Division 6 of Part C of Chapter III;
- (e) Sections 28 and 29, which make provision for cases of concealed fraud, are dealt with in Division 3 (b) of Part C of Chapter VI;
- (f) In respect of sections 3 and 16, the special position of the Crown is considered in Part D of Chapter VII;
- (g) Section 2, dealing with the refusing of relief on the grounds of acquiescence or otherwise, is examined in Part E of Chapter II; and

(h) Extinguishment of title is covered in Part A of Chapter VII.

Thus, this Chapter is confined to:

- (a) Actions to recover land or rent charges which are now provided for in sections 1 to 16;
- (b) Actions relating to dower which are dealt with in sections 25 to 27;
- (c) Charges on land which are governed by sections 17 to 24; and
- (d) Charges on personal property which are not governed by the present statute.

The Commission makes no recommendations in this Report respecting any change in sections 25 to 27, which relate to dower actions. The need for dower and other matrimonial rights in property are under study as part of the Commission's Family Law Project. For the time being sections 25 to 27 should be carried forward into the proposed statute.

Generally, the law relating to sections 1 to 24 of *The Limitations Act* is complex, confused and obscure. (See Anger and Honsberger, *Canadian Law of Real Property*, Chapter 11; Falconbridge, *The Law of Mortgages of Land*, Chapter 30.) It can be much simplified by re-organization and re-drafting. (See, for example, the New South Wales bill.)

Reference should be made here to the Uniform Act. It represents a considerable improvement over the Ontario statute. The organization and wording of the Uniform Act provisions make them more comprehensible than those in the provincial enactment. The substance of the law in both statutes is much the same, except that special provision in the Uniform Act is made for charges on personal property. Differences in respect of rent and charges on property also arise from the fact that the Uniform Act does not provide a longer period for specialties, as does the present Ontario act.

The Commission does not recommend, however, that the Uniform Act provisions relating to actions to recover land and charges on property should be adopted as they now stand. The provisions are cumbersome and could be more effectively organized. The relevant Parts of the Uniform Act are:

Part II Charges on Land

Part III Land

Part IV Mortgages of Real and Personal Property

Part V Agreements for the Sale of Land

Part VI Conditional Sale of Goods.

The Commission believes that only two basic provisions are necessary, one for actions to recover land and the other for charges on property. Parts V and VI of the Uniform Act, it should be noted, were added at the suggestion of the Saskatchewan Commissioners in 1932, the year after the Uniform Act was adopted in its initial form. (See Proceedings of the Fifteenth Annual Meeting of the Conference of Commissioners on Uniformity of Legislation in Canada, 1932, at pp. 26-31.)

Part V (Agreements for the Sale of Land) and section 13 were added because the Uniform Act did not have a longer period for contracts under seal than for ordinary contracts. It was felt that six years was not sufficiently long a limitation period for agreements for sale of land and that such agreements should be subject to the same period as mortgages. Thus, these agreements were specially provided for in Part V and section 13, and made subject to a ten-year limitation period.

Part VI (Conditional Sale of Goods) was adopted since it was believed that goods bought under a conditional sales contract should be treated in the same way, for limitation purposes, as mortgaged personal property. Without Part VI, a seller would have had only six years to repossess under a conditional sales contract, while the time for seizure under a chattel mortgage was ten years. Furthermore, since the Uniform Act did not provide a longer period for personal actions on contracts under seal than for ordinary contracts, there would only be six years to sue on the personal covenant. Part VI gave the seller under the contract ten years to take proceedings either to sell or recover the goods in the event of default by the purchaser. Presumably, he could still only sue on the promise to pay within six years (whether or not the contract was under seal).

Since this Commission recommends a ten-year period for deeds, one of the reasons for the Conference on Uniformity adopting Parts V and VI has no application to this Report. Furthermore, this Commission considers that one general provision is all that is required for charges on property.

In addition, each of the five Parts contains provisions dealing with the consequences of acknowledgment and part payment. The Commission later recommends that there should be one general provision dealing with acknowledgment and part payment in the proposed statute. (See Part D of Chapter VI.) The adoption of such a general provision would result in a considerable condensation and render the statute more understandable.

B. ACTIONS TO RECOVER LAND

Sections 1 to 16 provide the basis for the acquisition of possessory titles to land in this Province. Generally, after ten years adverse possession of land, the dispossessed owner not only is barred from pursuing his remedy in the courts but loses his right of ownership. (Where it is the Crown that is dispossessed, the period is sixty years, except as section 16 provides.) Section 15 extinguishes his title. The person who dispossessed the owner then has a title, based on his possession, which no one can

challenge. Title to any lands in Ontario can be acquired in this fashion, except those which have been brought into the Land Titles system. Section 57 of *The Land Titles Act* excludes the application of the adverse possession principle to lands governed by that statute, with a minor exception (in respect of a judge's plan under s. 154).

In this Report, the Commission will not be considering the merits of the possessory title principle, or weighing the advantages and disadvantages of different systems of land registration. These matters are currently under review in the Commission's Law of Property project. Furthermore, it is expected that the Law of Property project will make recommendations as to improvements in the law of adverse possession. It might well be desirable for there to be a provision in the proposed statute setting forth rules for determining when adverse possession exists. This has been done in section 38 of the draft New South Wales bill. The Commission considers that such a provision should be left until it has the recommendations from the Law of Property project.

For the time being, the Commission therefore recommends no change in the substance of the law in sections 4 to 15 insofar as these provisions relate to actions to recover land.

Nor does the Commission recommend any change with respect to the ten-year period. That period has been established in Ontario since 1874. In England, from the same date, the period has been twelve years. Prior to 1874, the governing period in both jurisdictions was twenty years. In Alberta, Manitoba and Saskatchewan, the period is ten years, while in British Columbia and the four Atlantic provinces, the period is twenty.

The Commission can see no reason for altering the ten-year period. There appears to be no dissatisfaction with it. The same period now applies with respect to charges on real property and the Commission will recommend that that period also remain unchanged. The special position of the Crown, in actions to recover land, is dealt with in Part D of Chapter VII.

C. ACTIONS TO RECOVER RENT

The provisions of the Statute with respect to rent are, to say the least, confusing. Rent has two meanings:

1. Rent service, by which is meant rent payable (reserved) under a lease between landlord and tenant, and
2. Rent charge, by which is meant a periodical sum of money payable by the owner of land to another, the payment of that money being secured by charge against the land.

The rent charge has nothing to do with the relationship of landlord and tenant and is uncommon in Ontario today. Rent in the various provisions of *The Limitations Act* may have only one of these meanings or both.

The provisions are:

1. Actions to recover land or rent under sections 3 and 4, are governed by sixty and ten-year periods respectively;
2. No more than six years arrears of rent are recoverable under section 17;
3. Actions for rent, upon an indenture of demise, must be brought within twenty years under section 45 (1) (a); and
4. Actions for debt for arrears of rent must be brought within six years under section 45 (1) (g).

These four provisions came from three different English statutes (see Appendix A) and are in conflict. The English provisions are explained in volume 20 of Halsbury's Laws of England, 2nd ed., at pp. 648-649, 656-657, 672-675, and 681 et seq. The law of Ontario would appear to be the same. It may be summarized:

1. Rent in sections 3 and 4 means a rent charge and does not include rent payable under a lease;
2. Rent in section 17 includes both a rent charge and rent service;
3. Where a rent charge is also secured by a covenant, an action on the covenant has to be brought in ten years under section 4, rather than twenty years under section 45 (1) (a);
4. Actions for arrears of rent reserved, which became owing under a contract not amounting to a specialty are governed by the six-year period under section 17 and section 45 (1) (g);
5. Where the arrears of rent became owing under an indenture of demise, however, up to twenty years arrears are recoverable in action on the covenant to pay the rent under section 45 (1) (a), but in all other proceedings by the creditor, such as distress, only six years arrears are recoverable under section 17.

The Commission recommends that these provisions should be clarified. Proceedings for the recovery of rent owing under a rent charge should be removed from the provisions governing actions to recover land and treated as a charge on property. This has been done in the 1939 English Act, the Uniform Act and the New South Wales bill.

Under the proposed statute, it will not be necessary to have provisions such as clauses (a) and (g) of section 45 (1). Clause (a) will be covered by the ten-year period the Commission recommends for deeds. Clause g, insofar as it extends to an ordinary debt for rent, would be covered by the six-year "catch-all" provision which will apply to all ordinary debt actions.

There should be a provision, however, similar to section 17 which limits claims for rent to six years arrears. Such a provision should operate whether the landlord is bringing distress proceedings or suing the tenant personally on the covenant. The Commission disapproves of the present position whereby twenty years arrears of rent can be sued for on the covenant. A similar situation was remedied in the 1939 English Act (ss. 2 (3) and 17), on the recommendation of the Wright Committee (p. 14). The problem does not occur under the Uniform Act as that statute did not provide a longer period for specialties.

In the Interim Report of this Commission on the law of landlord and tenant, it has been recommended that the landlord's right to distress should be abolished insofar as residential tenancies are concerned. Whether or not distress is eliminated, the Commission believes that no more than six years arrears of rent should be recoverable by a landlord regardless of how he proceeds.

D. MORTGAGES AND OTHER CHARGES ON REALTY

The main points with respect to mortgages may be summarized:

1. A mortgagor's right to redeem:
 - (a) is not subject to any limitation period so long as he remains in possession;
 - (b) is subject to a ten-year limitation period, under section 19, where the mortgagee has obtained possession;
2. A mortgagee's right to foreclosure:
 - (a) is not subject to any limitation period so long as he is in possession;
 - (b) is subject to a ten-year limitation period, as an action to recover land under section 4, where the mortgagor is in possession;
3. The other actions which may be brought by a mortgagee to recover out of the "land or rent" any sum of money secured by the mortgage are subject to a ten-year limitation period under section 23 (except a lien or charge arising out of an execution process). (Falconbridge, however, said it could be argued that an action for sale in which foreclosure might be ordered after an abortive sale should be governed by section 4 in the same way as foreclosure actions. See *The Law of Mortgages of Land*, 2nd ed., at p. 554.);
4. (1) A mortgagee's right to bring a personal action against the mortgagor on the covenant to pay in the mortgage is subject to a ten-year limitation period under section 45 (1) (k);
 - (2) A mortgagee's right to bring a personal action against a grantee of the equity of redemption under section 18 of *The Mortgages Act* is subject to a ten-year limitation period under section 45 (1) (l);

5. (a) No more than six years arrears of mortgage interest can be recovered out of the mortgaged land by action or distress under section 17;
- (b) No more than ten years arrears of mortgage interest can be recovered in a personal action on the covenant to pay in the mortgage under section 45 (1) (l);
- (c) Where a mortgagor wishes to redeem his land, he must pay all arrears of interest. (See section 17 (2).)

The ten-year period is suitable to these kinds of proceedings, in the view of the Commission. It is usual in most comparable jurisdictions for the period governing these proceedings to be the same as actions to recover land. Ontario is not an exception. Mortgages are usually of a long term nature and involve what, at least to the ordinary man, are relatively large amounts. A mortgage is made under seal: it therefore is not inappropriate that actions to enforce them against the particular security should be subject to the same period as actions brought on a deed.

This Commission agrees with the position taken by the New South Wales Commission:

. . . the remedies of the mortgagee affecting the property, whether by recovery of possession, foreclosure or otherwise, are taken to be merely accessory to the principal debt On this approach it is right that the accessory remedies against the property should last as long as the principal debt remains recoverable but no longer. If the limitation periods are governed, as we think they should be governed, by these principles, questions of the possession of the mortgaged property are not relevant. (See paras. 214-215.)

Accordingly, this Commission recommends that all proceedings brought by a mortgagee to enforce his security should be treated in the proposed statute as actions to enforce a charge and be subject to the same period as a personal action on the covenant to pay in the mortgage deed, namely ten years. This principle should operate whether or not the mortgagee is in possession of the mortgaged property. On the other hand, there should continue to be no limitation period imposed on actions for redemption where the mortgagor is in possession of the mortgaged property.

The New South Wales Commission also proposed the abolishing of the rules by which a mortgagee can require statute-barred interest as the price of redemption and in other instances. (See paras. 201 and 219.) It was stated that such a step would prevent "the substantive rights of parties depending on the tactical situation in which they find themselves". This Commission agrees with that view.

Finally, the Commission considers that the provision confining actions for interest to six years arrears should apply to personal actions on the covenant. This is the result under the Uniform Act since it

contains no longer period for specialties. Under the 1939 English Act, such a six-year restriction exists. (See sections 2 (3) and 18.)

Since the Commission recommends that actions for interest secured against property be confined to six years arrears, to be logical the recommendation should extend to all arrears of interest. It can see no justification for allowing ten years arrears to be sued for in the case of unsecured interest owing under a deed, when only six years arrears are recoverable in the case of secured interest.

E. ACTIONS RELATING TO CHARGES ON PERSONAL PROPERTY

There is no limitation period at present for either actions for redemption or foreclosure on a mortgage of personal property. These actions, however, may fail through acquiescence or laches. Nor is there any limitation period applicable to liens on personalty.

Claims in respect of charges on personalty should be subject to a limitation period. Mortgages sometimes include both personal and real property and this has created difficulty, from a limitations point of view. The simple solution is to have the same provisions that apply to mortgages of realty apply equally to personalty. This is what is done under Part IV of the Uniform Act. The model statute also contains provisions relating to conditional contracts for the sale of goods. Part VI applies a ten-year period to proceedings by sellers to re-sell or recover the goods subject to the contract.

The Wright Committee recommended that charges on personal property be treated in the same way as those on real property, with two exceptions. (See pp. 15-16.) The first exception was with respect to actions for redemption of mortgaged personal property. The Committee felt that there should be no limitation period in such cases. Unlike mortgagees of land, mortgagees of personalty in many instances would have possession of the mortgaged property from the outset. This would be particularly true of bank loans on securities. The Committee pointed out that such securities might "remain so charged for an indefinite period, to cover a more or less permanent overdraft, and unless the bank acknowledged the title of the mortgagor, the effect [of the legislation] would be to extinguish the equity of redemption and give the bank an absolute title". The 1939 Act, although generally treating charges on realty and personalty alike, accordingly imposed no limitation period on actions to redeem mortgaged personalty. The New South Wales Commission did not think the exception was necessary in view of the change in the 1939 English statute which allowed time to run afresh in actions for redemption of mortgaged land where part payment was made. (See paras. 210 to 212.) It stated:

We think that there is no reason why a mortgagor of personalty should not have his right of redemption barred when the mortgagee has been in possession of the mortgaged property for twelve years and, during that period, the mortgagor has paid nothing, either of principal or of interest.

This Commission agrees with the New South Wales Report. Later in this Report (in Part D of Chapter VI), it is recommended that part payment start time running afresh in redemption actions. Thus, the conclusions of this and the New South Wales Commissions are based on similar positions. In commercial practice, it should be added, it would be highly improbable that a mortgage of personalty would remain in default for ten years without acknowledgment or any part payment *and* without the mortgagee having taken action to realize on his security.

The second exception in the Wright Report to the general proposition that charges on realty and personalty should be treated alike is with respect to life insurance policies that have been given as security. The Wright Committee states (at p. 16):

It would be a hardship to the mortgagee, and outside the contemplation of the parties, that the mortgagee (if not in possession) should have to realize the security within the period of limitation or else lose his rights by default. In many cases he would prefer to keep the policy alive until it matures for payment. We recommend therefore that time should not run in the case of a charge on a life insurance policy until the policy matures.

Section 18 (3) of the 1939 statute gave effect to that recommendation. The New South Wales Report does not discuss this problem and its draft bill does not contain a provision similar to section 18 (3) of the English statute. This Commission believes it might be helpful in some situations to have a provision similar to that in the 1939 English statute. While it is true that loans on life insurance policies are generally based on the cash surrender value of those policies, there may be occasions where it will be in the interest of the mortgagee (and, perhaps even the mortgagor's family) for the policy to be maintained until maturity. The difference between the cash surrender value and the value at maturity may well be very substantial. Accordingly, the Commission does not feel that the mortgagee should be compelled to realize on his security within a limited time where the security is a life insurance policy which has not matured.

This Commission recommends therefore that the ten-year period applicable to charges on real property be extended to cover charges on personal property in the same way, except as to unmaturing life insurance policies. The provision should cover all liens on personal property. Liens are discussed in Part A of Chapter VII.

F. SUMMARY OF RECOMMENDATIONS

The recommendations of the Commission may be summarized as follows:

1. *There should be separate provisions in the proposed statute dealing with actions:*
 - (a) *to recover land, and*

- (b) relating to charges on both real and personal property;
2. *Actions relating to charges against real and personal property should include any proceedings to:*
 - (a) *enforce a rent charge,*
 - (b) *enforce a mortgage by foreclosure, by exercising a power of sale, taking possession or any other means,*
 - (c) *enforce a contract for the conditional sale of goods by seizure or otherwise,*
 - (d) *enforce an agreement for the sale of land,*
 - (e) *enforce a lien,*
 - (f) *redeem mortgaged property in the hands of a mortgagee,*
 - (g) *enforce a purchaser's right under a contract for the conditional sale of goods or an agreement for the sale of land;*
 3. *Actions to recover land and relating to charges on both real and personal property should be subject to a ten-year limitation period (as is the case at present with respect to actions brought under sections 4, 19 and 23 of The Limitations Act);*
 4. *Where the property subject to the charge is an unmatured life insurance policy, time should not begin to run until the policy has matured.*
 5. *In any action or proceeding, no more than six years arrears of:*
 - (a) *interest, whether owing in respect of a charge on property or not, or*
 - (b) *rent,*

should be recoverable;
 6. *The rules which entitle a mortgagee to payment of statute-barred arrears of interest in redemption actions or out of the proceeds of sale of the mortgaged property should be abolished.*

CHAPTER V

SPECIAL LIMITATION PERIODS

S U M M A R Y

- A. GENERAL
- B. NOTICES OF CLAIMS
- C. RECOMMENDATIONS
- D. SCHEDULE LISTING SPECIAL LIMITATION PERIODS
TO REMAIN OUTSIDE THE PROPOSED STATUTE

A. GENERAL

Scattered throughout the Ontario statutes there are some sixty special limitation periods, applying to a wide variety of actions and claims. In addition, there are at least ten provisions which make it mandatory to give a notice of claim within a limited time before an action can be brought: most of these notice of claim provisions are subject to waiver by a judge under certain circumstances.

About two-thirds of the special limitation periods deal with particular situations which, in the view of the Commission, require special treatment. These are listed in a schedule at the end of this Chapter. Examples are:

- (a) the one-year period for redemption of land sold for arrears of taxes, under s. 189 of *The Assessment Act*;
- (b) the six-year periods for making claims against the Assurance Funds under *The Land Titles Act* and *The Certification of Titles Act*;
- (c) the 37-day period for claiming liens on real property under *The Mechanics' Lien Act*; and
- (d) the 90-day period in which a purchaser of securities has to bring an action to rescind the contract under section 64 of *The Securities Act, 1966*.

It is clear from these illustrations that there are certain kinds of claims which will have to remain outside the operation of any general limitations statute. The Commission considers that they should remain in the statutes to which they relate. Included in the schedule at the end of the Chapter are various actions against insurers, which are subject to special limitation periods imposed by *The Insurance Act*. The advantages of maintaining uniformity in this area of the law have led the Commission to refrain from making any recommendations for change in these provisions.

On the other hand, there are twenty-two special limitation periods that reduce the time for bringing an action from that which would otherwise have been applicable under the present general statute and which should be repealed. Most of these were intended to cut down the time for bringing negligence actions and were enacted to protect the interests of some special group, such as municipal corporations, hospitals, doctors, dentists and insurance companies. They are:

- (a) the twelve-month period for bringing actions for damages occasioned by a motor vehicle under s. 147 (1) of *The Highway Traffic Act*;

(Note also: Actions against the Registrar under *The Motor Vehicles Accident Claims Act, 1961-62* must be brought within the times limited for actions under section 147 of *The Highway Traffic Act*. (See 17).)

- (b) the three-month periods for bringing actions for non-repair of highways,

- (i) against the Crown under s. 33 (5) of *The Highway Improvement Act*, and

- (ii) against municipalities under s. 443 (2) of *The Municipal Act*;

- (c) the following periods applicable to professional negligence and malpractice actions,

- (i) twelve months against doctors under s. 43 of *The Medical Act*,

- (ii) twelve months against radiological technicians under s. 13 of *The Radiological Technicians Act*,

- (iii) six months against dentists under s. 29 of *The Dentistry Act*,

- (iv) six months against pharmacists under s. 57 of *The Pharmacy Act*,

- (v) six months against veterinarians under s. 18 of *The Veterinarians Act*, and

- (vi) three months against funeral directors under s. 21 of *The Embalmers and Funeral Directors Act*;

- (d) the following periods applicable to hospitalization services,

- (i) twelve months for actions brought for anything done in pursuance of *The Private Sanitaria Act* (s. 49),

- (ii) six months for actions brought against a hospital or nurse or person employed therein for damages caused by negligence in the admission, care and treatment of a patient, under s. 33 of *The Public Hospitals Act*,

- (iii) six months for actions brought against a sanatorium or any nurse or person employed therein for injury caused by negligence in the admission, care, treatment or discharge of a patient, under s. 53 of *The Sanatoria for Consumptives Act*,
- (iv) six months for all actions, prosecutions or other proceedings against any person or psychiatric facility for anything done or omitted to be done under *The Mental Health Act, 1967* (s. 58),
- (v) six months for all actions and prosecutions for anything done under *The Mental Hospitals Act* (s. 10 (2)),
- (vi) six months for all actions for anything done or omitted to be done under *The Ontario Mental Health Foundation Act, 1960-61*, as amended 1965, c. 88 (s. 12r (1));
- (e) the six-month period for bringing actions, prosecutions or other proceedings for an act done in performance of a statutory or other public duty or authority, or neglect or default in the exercise of such duty or authority, under s. 11 of *The Public Authorities Protection Act*;
- (f) the six-month period for bringing actions for anything done or omitted in the construction, operation or maintenance of a municipal telephone system or in the exercise of any of the powers conferred by *The Telephone Act* (s. 86);
- (g) the six-month period for anything done in pursuance of *The Public Utilities Act* (s. 32), except where there is continuing damage when the period is one year after the original cause of action arose;
- (h) the one-year period for bringing all actions of indemnity, or for damage sustained by reason of the construction or operation of a railway governed by *The Railways Act* (R.S.O. 1950, c. 331, s. 267 (1));
- (i) the three-month period for bringing actions for libel contained in a newspaper or broadcast, under s. 6 of *The Libel and Slander Act*;
- (j) the twelve-month period for bringing actions for damages under *The Fatal Accidents Act* (s. 5); and
- (k) the one-year period for actions brought by and against the executors or administrators of deceased persons, under section 38 of *The Trustee Act* (s. 38 (4)).

In three of the special limitation period situations mentioned above, there are also requirements for giving notices of claim within even shorter periods. These are:

- (a) 10 days under *The Highway Improvement Act* (s. 33 (4));
- (b) 10 days in the case of a county or township, and 7 days in the case of an urban municipality under *The Municipal Act* (s. 443); and
- (c) six weeks under *The Libel and Slander Act* (s. 5 (1)).

Failure to give these notices will bar the action, although there is judicial power to give relief under certain circumstances with respect to the notices referred to in (a) and (b) above. These and other similar notices of claim will be dealt with later in this Chapter: they are mentioned here to show that in certain situations there are two special time limits that have to be observed.

The twenty-two special limitation periods all give protection to special interest groups. In negligence cases, by far the most significant actions caught by these special periods, the time applicable has been reduced from six years to one year, six months or three months. Undoubtedly the six-year period in section 45 (1) (g) of the present Ontario statute, which dates from 1623, is too long for that kind of litigation. In England, it will be recalled, it was found necessary to amend the 1939 Act, which laid down a six-year period for tort and contract actions generally, so as to establish a three-year period for personal injury actions.

However, if as the Commission recommends, a two-year period is adopted for personal injury or property damage claims, then is there any real justification for continuing those special limitation periods which apply to that kind of claim?

The public will be best served by having limitation laws that are easily understandable and well known. There should therefore be as few special limitation periods as possible.

Not only do the existing special limitation periods vary in length, without any apparent reason, but they are usually not subject to suspension in the event of disability. For example, an injured infant has only the one-year period to sue in claims governed by either section 147 of *The Highway Traffic Act* or section 43 of *The Medical Act*. This is very unsatisfactory.

Furthermore, each special limitation provision is subject to the possibility of litigation in order to determine the extent of its operation. The best illustration is section 147 of *The Highway Traffic Act*, which lays down a one-year period for damages occasioned by a motor vehicle. There has been considerable litigation over the meaning of the section. Would it, for example, apply to damages caused by a taxi-driver slamming the door on a passenger's hand (*Harris v. Yellow Cab Ltd.*, [1926] 59 O.L.R. 8)? Would it apply to damages to a house caused by the vibrations of cement-mixing trucks operating in the street in front of the house (*Dufferin Paving and Crushed Stone, Ltd. v. Anger*, [1940] S.C.R. 174)? Does it apply where the motor vehicle is being driven on a farm

(*Viane v. Neyens*, [1959] O.W.N. 29)? Does it apply to an action against the repairman whose faulty work on brakes resulted in the motor vehicle occasioning damage (*Heppel v. Stewart* (1968), 69 D.L.R. 2nd 88)?

This Commission believes that all the twenty-two special limitation periods should be repealed. One of the chief factors that influenced the Commission in selecting the two-year period for personal injury or property damage actions (a reduction of four years in negligence cases) was that it would enable the repeal of the special limitation periods which would otherwise govern, without unduly upsetting the existing patterns of litigation.

The Commission fully appreciates the difficulties faced by the Crown and municipalities in gathering evidence in highway non-repair cases, but they have sufficient protection from the notice of claim requirements. Busy hospitals and doctors may deserve some sympathy, but it is the position of the injured patient that must be the governing concern. The most significant element in settling upon the time for making a claim must be the nature of the injury: it cannot be the nature of the person who is liable. Whether a personal injury occurs on the operating table, on the highway, or on faulty stairs in a private residence, the same factors are relevant. The injured person must have a reasonable time to discover the extent of his injuries, to find out his legal position and to attempt to reach a settlement without bringing an action. Furthermore, an injured person should be entitled to some time for recovery from his injuries. He should not, in an ordinary case of hospitalization, have to be worried about issuing a writ from his hospital bed.

It is recognized that some of the special interest groups which would be affected by the repeal of these special limitation periods will oppose any change. However, longer limitation periods elsewhere in respect of these matters do not appear to produce any serious adverse effects on these groups. England, whose limitations laws Ontario adopted, has no special limitation periods for professional negligence or motor vehicle injuries. All personal injury actions are governed by the three-year period. In addition, England repealed the equivalent to section 11 of *The Public Authorities Protection Act* and similar enactments in 1954, following the recommendations of the Tucker Committee. (See *Law Reform Limitation of Actions, &c. Act*, 1954, 2 & 3 Eliz. 2, c. 36.)

The State of New York has a three-year period for actions for personal injury arising out of negligence, property damage, and for malpractice. (See Civil Practice Law and Rules, s. 214.) Motor vehicle actions are governed by the three-year period.

Insofar as the one-year period for bringing actions under *The Fatal Accidents Act* and section 38 of *The Trustee Act* are concerned, the Commission believes they should be abolished. *The Fatal Accidents Act* creates a cause of action for the benefit of near relatives in the case of the death of a person through the wrongful act, neglect or default of another. Near relatives had no such right at common law. Under section 38 of *The Trustee Act*, torts committed against or by a person who sub-

sequently dies survive for the benefit or detriment of his estate, as the case may be. At common law, the executor or administrator of a deceased person's estate could neither sue nor be sued for any tort committed against or by the deceased in his lifetime. The Commission considers that the general provisions of the proposed statute should be applicable to claims of this kind. So that there should be no danger of a person losing his claim under *The Fatal Accidents Act* because of the extent to which time has run when death occurs, the proposed limitations statute should clearly provide that time should run from death. (Under the English *Fatal Accidents Act*, the period is three years from death. See *Law Reform (Limitation of Actions, &c.) Act, 1954*, 2 & 3 Eliz. 2, c. 36, s. 3.) Difficulties with time running out so as to bar claims under section 38 of *The Trustee Act* are minimized by section 70 of *The Surrogate Courts Act*.

The desirability of eliminating as many special limitation periods as possible has been recognized by the Conference of Commissioners on Uniformity of Legislation in Canada. After being requested by the Conference to review the Uniform Limitations Act, the Alberta Commissioners reported in 1967:

Our main criticism of the present law on limitations in tort is not directed to the Uniform Act but at the proliferation of special Acts. The Limitation Act should be a code but the fact is that in many common law provinces it rarely applies in tort claims. . . . We see no reason for a short period in vehicle cases or in actions against municipalities, though there is justification for the requirement of notice in snow and ice cases.

(See pp. 172-173 of the 1967 Proceedings.)

In 1968, the Alberta Commissioners further reported:

. . . it will be recalled that many provinces have passed special Acts with periods shorter than two years. We think that all of these Acts should be repealed. If any special short periods [e.g., against doctors and hospitals] are to remain [and we oppose this] then they should be put in the Limitations Act as Alberta did in 1966.

(the 1968 Proceedings are as yet unpublished.)

Alberta and Manitoba in their recent limitations reform legislation have amended or repealed many of their special limitation period provisions. (See S.A. 1966, c. 49, ss. 3 and 4; S.M. 1967, c. 32, s. 2 et seq.)

One special limitation period that has given the Commission difficulty is that in *The Libel and Slander Act*, which applies to libels in newspapers or broadcasts. The three-month period for bringing the action, combined with the mandatory six weeks' notice of claim, is very restrictive. It is, of course, true that the mass media have the function of keeping the public informed and there is something to be said for giving special protection. However, *The Libel and Slander Act* does provide protection by limiting the libelled person's claim to actual

damages if the libel was published in good faith and in a misunderstanding of the facts, and a full retraction was made. (See also ss. 9 and 10.) The notice of claim provision is to enable a retraction to be made so that damages can be mitigated before an action is brought. The purpose is to provide a procedure by which the libelled person can clear his reputation. The question is: are the time limits fair to the libelled person?

The Commission is recommending that libel and slander actions generally be subject to a two-year period. It might be argued that a one-year period would be as appropriate owing to the very nature of libel and slander suits, but the Commission believes that, in the interest of overall simplicity, it is more important to avoid the creation of a special one-year limitation period and to allow libel and slander cases to be governed by the two-year period which will apply to most torts. In New York, California and Illinois the governing period is one year, in Wisconsin it is two years. In England, the period has been six years since the 1939 reform legislation and six years is recommended in the New South Wales Report.

The Libel and Slander Act of this Province was largely adopted from English legislation of the last century. Although that English legislation contained the notice of claim procedure, it fixed no time limits for either the giving of that notice or the bringing of the action: it simply provided that the notice of claim should be given before the action was begun. Ontario added the three month limitation in 1894 (57 Vict., c. 27, s. 3) and the six week limitation for notice in 1909 (9 Edw. VII, c. 40, s. 8). British Columbia, which also borrowed from the English legislation, does not require the giving of the notice of claim or impose a special limitation period in its *Libel and Slander Act*. (See R.S.B.C. 1960, c. 218.)

Under the Canadian Uniform Defamation Act (adopted by the Conference in 1944) a notice of claim must be given within three months and the action commenced within six months. (See ss. 14 and 15.) The Uniform statute was adopted in this respect in Alberta, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and the two Territories. (R.S.A. 1955, c. 78, ss. 14 and 15; R.S.M. 1954, c. 60, ss. 14 and 15; R.S.N.B. 1952, c. 58, ss. 13 and 14; R.S.N.S. 1967, c. 72, ss. 17 and 18; R.S. P.E.I. 1952, c. 41, ss. 13 and 14; N.W.T.R.O. 1956, c. 21, ss. 14 and 15; and Y.T.R.O. 1958, c. 28, ss. 14 and 15.)

However, both Alberta and Manitoba, in their reform legislation of 1966 and 1967 respectively, repealed the six-month limitation period for bringing the action, leaving such actions to be governed by a period of two years which was to be applicable to defamation actions generally. (S.A. 1966, c. 49, ss. 3 and 4; S.M. 1967, c. 32, ss. 3 and 7.) The three-month notice of claim provisions were left untouched. This Commission has come to the conclusion that the special limitation period for bringing the action should be abolished, as has been done in Alberta and Manitoba. Furthermore, in the interest of uniformity, the period required for notice under section 5 (1) should be increased to three months. Seven other Canadian jurisdictions have that requirement.

Under the provisions of *The Medical Act*, *The Radiological Technicians Act* and *The Embalmers and Funeral Directors Act* now imposing special limitation periods for professional negligence, time runs from the date when, in the matter complained of, the professional service terminated. (*The Dentistry Act* and *The Veterinarians Act* were apparently intended to have similar provisions but, owing to poor drafting, time runs under these two statutes from when "the matter complained of terminated".) This does give the patient protection in some situations. On most occasions, however, the services will terminate on the date of the negligence or relatively shortly thereafter. If a two-year period is to apply to these cases, running from the date of damage, and the extension and disability provisions recommended in this Report were adopted, the Commission believes there would be no real need to have time run from when the professional services terminate.

The Commission takes a similar view of the provisions in some of the hospitalization statutes, which state that time runs from the date the patient is discharged or ceases to receive treatment. Considering the extension and disability provisions, two years from the date of damage should be sufficiently long.

In addition to the group of twenty-two special limitation periods listed earlier in this Chapter, the Commission considers that section 12 of *The Public Officers Act* should also be repealed. It provides that, in an action against a surety of a public officer, no damages shall be recovered "except as to matters and causes of action" that arose within ten years before the action was begun. There is no sufficient reason why sureties of public officers should be subject to different treatment than other sureties. Furthermore, the section appears to give rise to incongruities in cases where the surety can be sued directly (e.g., under s. 2 (6) of *The Sheriffs Act*). In such cases, the defaulting official would now be protected from suit six months after the cause of action arose by virtue of section 12 of *The Public Authorities Protection Act*. It would be absurd if section 12 of *The Public Officers Act* were taken to allow an action against the surety if the action against the official could not be maintained.

B. NOTICES OF CLAIM

A notice of claim which must be given within a limited time as a condition precedent to the bringing of an action achieves the same result as a limitation period. It is, in effect, a limitation period within a limitation period. There are five statutes containing notice of claim provisions of this kind. These will be examined here.

First, however, mention should be made of other notices which are related to the initial stage in the making of a claim but which, because of the special nature of those claims or the machinery established for dealing with them, are not reviewed here. These are:

- (a) Compensation is not payable under *The Workmen's Compensation Act* unless notice of the accident is given as soon as practicable and before the workman left the employment in which

he was injured (although relief from failure to give notice may be given (s. 21 (1) and (5)));

- (b) No grant shall be made out of The Compensation Fund operated under *The Law Society Act* unless notice is given within 6 months of the loss or within such further time not exceeding 18 months, as the benchers may allow (s. 53 (5) (b));
- (c) When a claim for crop and similar damage is made under s. 36 (1) of *The Power Commission Act*, notice of the claim shall be given as soon as possible but not later than 60 days (although there is provision for relief) (s. 36);
- (d) Proceedings for the determination of claims under *The Drainage Act, 1962-63* are instituted by serving 10 clear days' notice (s. 74 (1));
- (e) Proceedings for the determination of claims under *The Damage by Fumes Arbitration Act* must be begun by giving notice of damage within 7 days of the occurrence of the damage (s. 3 (1));
- (f) A person claiming damage to his main pipes or conduits under s. 56 (5) of *The Public Utilities Act* must give notice within one month after the calendar year in which the damage occurred (s. 56 (5));
- (g) A purchaser is entitled to rescission of a contract for sale of securities under s. 70 of *The Securities Act, 1966* by giving notice within,
 - (i) 60 days where the vendor has failed to give the notice required by s. 69 (1) when acting as a principal, and
 - (ii) 7 days where the vendor has failed to give the written confirmation that he acted as a principal under s. 69 (2);
- (h) No action shall be commenced against the Crown, unless a notice of claim given at least 60 days before the action is brought (s. 6a of *The Proceedings Against the Crown Act, 1962-63*, as amended 1965, c. 104);
- (i) Notices of claims arising out of contracts for the execution of public works under s. 39 of *The Public Works Act* must be given within six months (s. 39 (2));
- (j) Any affected person may contest a sheriff's distribution (where the amount levied is insufficient to meet all claims) under s. 30 (1) of *The Creditors' Relief Act* within 8 days by giving notice;

- (k) A lien under *The Warehousemen's Lien Act* is void, where goods are deposited by an agent, unless notice of the lien is given to the owner within two months (s. 3 (1) and (3));
- (l) The notice and proof of loss requirements under *The Insurance Act* (ss. 99, 111 (2) (s.c. 6), 204 (2) (s. cs. 3 and 4), and 223 (1)); and
- (m) The requirement under s. 11 of *The Lightning Rods Act* that a notice of claim be given within 30 days after loss.

The notice of claim provisions that the Commission proposes to deal with apply as follows:

- (a) An action against the Crown shall not be brought
 - (i) under s. 33 of *The Highway Improvement Act* for failure to repair a highway, unless a notice of claim is given within 10 days of the damage; and
 - (ii) for damages based on occupier's liability, unless the 60 day notice required by s. 6a (1) of *The Proceedings Against the Crown Act, 1962-63* (as amended 1965, c. 104) is given within 10 days after the claim arose (s. 6a (3));
- (b) An action against municipalities shall not be brought under s. 443 (1) of *The Municipal Act* for failure to repair a highway or bridge, unless a notice of claim is given within,
 - (i) 10 days in the case of a county or township, and
 - (ii) 7 days in the case of an urban municipality,
 after injury happened (s. 443 (5));
- (c) An action in respect of frequency change-overs under ss. 25 to 28 of *The Power Commission Act* shall not be brought unless a notice of claim is given within 90 days after the cause of action arose (s. 32 (2)); and
- (d) An action for libel in a newspaper or broadcast shall not be brought unless a notice of claim is given within six weeks after the alleged libel comes to the knowledge of the potential plaintiff (s. 5 (1) of *The Libel and Slander Act*).

The only justifiable purpose for these notice of claim provisions, except the last, can be to give the person claimed against an opportunity that he would not otherwise have of investigating the circumstances under which the injury occurred. In the libel situation, the purpose is to ensure that there is the opportunity to retract and thus mitigate the damage. (It has already been recommended that the time for giving the notice under section 5 (1) of *The Libel and Slander Act* be increased to three months.)

The Commission does not believe that a person should be absolutely barred from bringing an action merely because he has failed to give the notice required. If such requirements are to continue, and there is some justification for their retention, then the courts must be able to give relief from any of these provisions where it would be just to do so. (A provision similar to s. 94b of *The Insurance Act* would be appropriate.) At present, *The Highway Improvement Act* provision may be waived by the trial judge if he is of the opinion that there is a reasonable excuse for the failure to notify and that the Crown will not be prejudiced in its defence. *The Municipal Act* provision, except as it applies to injuries caused by snow or ice on a sidewalk, may be waived in a similar way even if a reasonable excuse for the failure is not established. (In addition, *The Municipal Act* provision is not a bar in the case of the death of the person injured.)

C. RECOMMENDATIONS

The Commission therefore recommends:

1. *The repeal of the following special limitation provisions:*

- (a) s. 147 of *The Highway Traffic Act*,
- (b) s. 17 of *The Motor Vehicle Accident Act, 1961-62*,
- (c) s. 33 (5) of *The Highway Improvement Act*,
- (d) s. 443 (2) of *The Municipal Act*,
- (e) s. 43 of *The Medical Act*,
- (f) s. 29 of *The Dentistry Act*,
- (g) s. 57 of *The Pharmacy Act*,
- (h) s. 13 of *The Radiological Technicians Act*,
- (i) s. 18 of *The Veterinarians Act*,
- (j) s. 21 of *The Embalmers and Funeral Directors Act*,
- (k) s. 49 of *The Private Sanatoria Act*,
- (l) s. 33 of *The Public Hospitals Act*,
- (m) s. 53 of *The Sanatoria for Consumptives Act*,
- (n) s. 58 of *The Mental Health Act, 1967*,
- (o) s. 10 (2) of *The Mental Hospitals Act*,
- (p) s. 12r (1) of *The Ontario Mental Health Foundation Act, 1960-61*,
- (q) s. 11 of *The Public Authorities Protection Act*,
- (r) s. 12 of *The Public Officers Act*,

- (s) s. 86 of The Telephone Act,
 - (t) s. 32 of The Public Utilities Act,
 - (u) s. 267 (1) of The Railways Act,
 - (v) s. 6 of The Libel and Slander Act,
 - (w) s. 5 of The Fatal Accidents Act, and
 - (x) s. 38 (4) of The Trustee Act;
2. *The proposed limitation statute should expressly provide that actions brought under The Fatal Accidents Act be governed by the two-year period, with time running from the date of death;*
 3. *The proposed limitation statute should expressly provide that actions brought against the Registrar under The Motor Vehicle Accident Claims Act, 1961-62 be governed by the two-year period;*
 4. *The time for giving the notice required by section 5 (1) of The Libel and Slander Act should be increased to three months;*
 5. *In respect of the following notice of claim provisions, failure to notify within the required time should not be a bar to the bringing of an action if in the opinion of a judge (either the judge before whom the action is tried or a judge on a preliminary application) such a result would be unjust:*
 - (a) s. 33 (4) of The Highway Improvement Act,
 - (b) s. 6a (3) of The Proceedings Against the Crown Act,
 - (c) s. 443 (5) of The Municipal Act,
 - (d) s. 32 (2) of The Power Commission Act, and
 - (e) s. 5 (1) of The Libel and Slander Act;
 6. *The provisions of the proposed statute regarding the postponement, suspension and extension of time should apply to all special limitation periods that remain unrepealed, unless the statutes creating those special limitation periods expressly provide otherwise.*

D. SCHEDULE LISTING SPECIAL LIMITATION PERIODS TO REMAIN OUTSIDE THE PROPOSED STATUTE

I Claims Against Special Funds and Similar Claims

Claims against the Assurance Funds under *The Certification of Titles Act* and *The Land Titles Act* by a person wrongfully deprived of an interest in land by the operation of those statutes must be brought within six years. (See s. 16 (1) of the former and s. 63 (3) of the latter statute.)

Claims for compensation under the Assurance Fund under section 45 (3) of *The Personal Property Security Act, 1967* by a person who suffers loss or damage as a result of his reliance on a registrar's certificate must be made within one year. (See s. 45 (3).)

Claims for compensation under *The Workmen's Compensation Act* must be made in six months, although the Workmen's Compensation Board has a discretion to remove the bar in certain circumstances if the claim is not made in that period. (See s. 21 (1) and (5).)

Claims for compensation under *The Law Enforcement Compensation Act, 1967* in the case of persons killed or injured assisting a peace officer in making an arrest or preserving the peace must be made to the Law Enforcement Compensation Board within one year, although the Board has discretion to extend the time. (See s. 6.)

II *Claims Against Insurers under The Insurance Act*

1. Actions against an insurer under Part V (Life Insurance) must not be brought after one year after furnishing of evidence required by s. 170 or more than 6 years from the event making the insurance payable, whichever period first expires. (s. 173 (1) and (2).)
2. Actions against an insurer on a fire insurance contract must be brought within one year after the loss or damage occurs. (s. 111 (2), Statutory Condition 14.)
3. Actions and proceedings against an insurer on a contract governed by Part VI (Automobile Insurance) must be brought within one year from
 - (a) the happening of the loss, in respect of loss or damage to the insured automobile, or
 - (b) the cause of action, in respect of loss or damage to persons or property. (s. 204 (2), Statutory Condition 6 (3))

[Statutory Condition 6 (3) (b) is ambiguous. It should be amended to make it clear that time runs from the accrual of the cause of action *against the insurer*.]

4. Actions against insurers under contracts governed by ss. 226a, 226b and 226c (which deal with special benefits payable with respect to automobile accidents) must be commenced within the limitation period specified in the contract, but in no event shall the period be less than one year. (s. 226g)
5. Actions against an insurer under s. 222 (1), by a third party to have the insurance money applied to his claim, must be brought within one year from the final determination of the action against the insured, including appeals if any. (s. 222 (2))

III *Claims for Liens*

Claims for liens on real property under *The Mechanic's Lien Act* are required to be registered within 37 days. (See ss. 21 and 22.)

Claims for liens under *The Woodmen's Lien for Wages Act* must be filed:

- (a) by a contractor, on or before the first day of September next following the performance of the labour, and
- (b) by others:
 - (i) if the labour was performed between October 1st and April 1st, on or before April 30th, and
 - (ii) if the labour was performed in the remainder of the year, within 30 days after the last day on which such labour was performed.

IV *Claims Relating to Expropriation*

Claims for compensation for expropriation and damages for injurious affection under the following statutes:

- (a) *The Expropriations Act, 1968-69* (See s. 22);
- (b) *The Highway Improvement Act* (See s. 10);
- (c) *The Municipal Act* (See ss. 340, 346 and s. 465 (2));
- (d) *The Public Works Act* (See s. 24).

V *Claims for Lost Property*

Claims for lost property must be made within three months, although the value of the property may be claimed up to one year, under the following statutes:

- (a) *The Provincial Parks Act* (See s. 10a);
- (b) *The St. Lawrence Parks Commission Act, 1964* (See s. 15a); and
- (c) *The St. Clair Parkway Commission Act, 1966* (See s. 22).

VI *Claims and Proceedings for Wages*

1. Claims for wages owing by directors of corporations must be brought:

- (a) within six months where *The Corporations Act* is applicable (See s. 73 (2)); and
- (b) within one year where *The Loan and Trust Corporations Act* is applicable (See s. 45 (2)).

2. Proceedings under *The Master and Servant Act* (as amended 1961-62, c. 77) may be brought within six months of the termination of employment or last payment of wages, whichever last happened.

VII *Special Actions under The Corporations Act and The Securities Act, 1966*

Actions against insiders under *The Corporations Act* and *The Securities Act, 1966* must be brought within two years. (See s. 71d of the former and s. 113 of the latter.)

Actions by creditors of a corporation against shareholders under section 36 of *The Corporations Act*, which provides for a decrease of issued capital, must be brought within two years of the supplementary letters patent (and the corporation must have been sued within six months with execution unsatisfied). (See s. 36 (2).)

Actions by creditors of a corporation against shareholders, after dissolution of the corporation and distribution of assets, under section 329 of *The Corporations Act* must be brought within one year. (s. 329)

Actions by a purchaser of securities to rescind the contract under section 64 of *The Securities Act, 1966* must be brought within 90 days of the receipt of the prospectus. (s. 64 (2))

Action to rescind a contract under s. 70 of *The Securities Act, 1966* must be brought within three months. (s. 70 (4))

VIII *Miscellaneous*

The Assessment Act

1. Actions in respect to assessments or taxes based thereon must be brought within 60 days after the day on which the roll should be returned or its actual return, whichever is later. (s. 88)
2. Actions to set aside a deed or recover land which has been sold for arrears of taxes are barred one year after such sale. (s. 189)

The Assignments and Preferences Act

Where there has been an assignment for the general benefit of creditors and a notice of contestation has been served on a claimant by the assignee, the claimant must bring his action in 30 days of receiving the notice. (s. 26 (2))

The Bulk Sales Act

Actions to set aside a sale in bulk for failure to comply with *The Bulk Sales Act* must be brought either before documents are filed under s. 11 or within six months thereafter. (s. 19)

The Coroners Act

An action for a penalty against a disqualified coroner under s. 19 must be brought within one year. (s. 19 (4))

(Although it is not a matter of limitations, the Commission wished to note in this Report its disapproval of this kind of action. A coroner acting in contravention of s. 19 (1) should be subject to prosecution and fine in the usual manner, not to a penalty that can be sued for and recovered by anybody.)

The Election Act

1. Actions to recover penalties must be brought within four months. (s. 184)
2. Claims against candidate for election expenses must be made within 60 days of election result. (s. 189)

The Gaming Act

Actions under *The Gaming Act* to recover gambling losses of \$40 or more must be brought within three months. (s. 3)

The Junior Farmer Establishment Act

Claims by a bank for a loss in respect of a guaranteed loan under s. 26 must be made to the Treasurer of Ontario not sooner than 90 days nor later than one year after loan becomes due. (s. 26 (4))

The Lakes and Rivers Improvement Act

All claims to arbitration under Part VI of the Act, which deals with the driving of timber, must be made within one year. (s. 81)

The Lightning Rods Act

Actions under section 11 for damages for loss by lightning where lightning rods have been installed must be brought within one year. (s. 11 (2))

The Mortgages Act

Actions by a mortgagee under a building mortgage against the original mortgagor on the covenant to repay must be brought within one year from the date of the maturity of the mortgage, if the original mortgagor has made a *bona fide* sale and his grantee is obligated to indemnify him with respect to the mortgage. (s. 19)

The Power Commission Act

Actions brought in connection with frequency change-over under sections 25 and 28 must be brought within one year. (s. 32 (1))

The Public Hospitals Act

Actions by a municipality against a patient to recover hospital expenses paid by it under section 29 (1) must be brought within one year. (s. 29 (4))

The Public Lands Act

1. Claims for compensation where the Crown has made inconsistent grants of land must be made within five years. (s. 32)
2. Claims for compensation where the Crown has made grant which is deficient, must be made within five years. (s. 33 (3))

S U M M A R Y

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A. INTRODUCTION

The general principle of a limitations statute is that no proceedings may be brought after a particular period of time has elapsed from the moment at which the cause of action arose.

This raises three questions:

- 1. When does a cause of action arise?
- 2. What postponement, suspension, or extension, if any, should be made with regard to the running of time:
 - (a) owing to the absence of either the potential plaintiff or defendant from the jurisdiction,
 - (b) where the potential plaintiff is under a disability as to infancy or unsoundness of mind,
 - (c) where the potential claimant is not aware of his cause of action,

(d) with respect to set-offs, counterclaims, adding of parties, and amendment of pleadings, and

(e) generally?

3. Should time run afresh when a debtor makes a partial payment or acknowledges his debt in some other way?

B. WHEN DOES A CAUSE OF ACTION ARISE?

There is considerable case law relating to the accrual of causes of action. The common law has laid down a number of rules for the variety of situations that may exist. For example, in cases for damages for breach of contract, time runs from the breach and not from the occurrence of damage. In tort, it will depend on whether or not damage is the gist of the action. Some torts, such as trespass and libel, are actionable *per se*. In these cases, time runs from the commission of the tort. However, with respect to nearly all other torts, there must be damage before the tort is actionable and time runs from the occurrence of the damage, which is regarded as the gist of the action. Most slander actions come in this latter category. Furthermore, some torts, such as false imprisonment, are continuing ones and these give rise to a fresh cause of action each day they continue.

In instances where negligence is the basis of a claim and the negligence amounted to a breach of contract, the period runs from when the negligence occurred. This usually occurs in professional negligence cases. (See, for example, *Schwebel v. Telekes*, [1967] 1 O.R. 541.) Where there is no contract between the parties to the action, the better opinion would seem to be that time would run from the damage since damage is the gist of the action. (See, for example, *Long v. Western Propellor Co. Ltd.* (1968), 67 D.L.R. 2d 345.) However, the view has been expressed that this is not the case, since in both contract and tort the negligence is a breach of duty, in one instance imposed by contract and in the other by law. Thus, it has been said that time should run from the breach of duty, even where there is no contract. (See Hals., 3rd ed., vol. 24, p. 223, fn. (b).) If what has been said to be the better view is correct, there would appear to be an inconsistency. The time at which the cause of action arises in a claim based on negligence will depend on whether there is present a contract on which the negligence claim could be based. If there is such a contract and the damage occurred after the breach, the claimant will be barred sooner than in a similar situation where there is no such contract. This inconsistency should be remedied. What is more important, however, is the removal of the unfairness to potential plaintiffs generally whose claims are founded on the breach of a contractual duty to take care. Time should run, not from the breach of contract, but from the occurrence of damage. This is particularly true of professional negligence cases (such as *Schwebel v. Telekes*), but it is also applicable to other situations, such as the storage or carriage of goods.

Accordingly, the Commission recommends:

In cases which are based on breach of a duty to take care, whether that duty arises in tort, contract or by statute, time should run from the occurrence of damage.

This recommendation is in accord with the views expressed by the Alberta Commissioners in their 1968 Report to the Conference of Commissioners on Uniformity.

Generally, however, the common law rules relating to the accrual of causes of action are adequate. The Commission sees no need to interfere with them, other than mentioned above.

C. POSTPONEMENT, SUSPENSION AND EXTENSION

The four situations mentioned earlier which may create difficulties with respect to the arising of causes of actions and the running of time are:

1. Absence from the jurisdiction,
2. Disability from infancy or mental unsoundness,
3. Unawareness of the material facts,
4. Where, although an action is started in time, there is insufficient time to make set-offs, counterclaims, add parties, or amend pleadings.

The first three situations may exist at the time the cause of action arises. Certain of them, such as disability from unsound mind or absence from the jurisdiction, may not come into existence until after the cause of action has arisen. The fourth situation would usually arise after the period for bringing an action, which was brought in time, has expired.

The difficulties created by these situations may be remedied in one or more ways:

1. By postponing the time at which the cause of action will arise where the situation exists at the time when the cause would arise under normal circumstances;
2. By suspending the running of time where time has already started to run; or
3. By extending the period.

No matter whether the running of time is postponed, suspended or extended, the result is to postpone the bar to the action.

1. *Absence from Jurisdiction*

There are two situations:

- (a) Absence from the jurisdiction of the potential plaintiff, and

(b) Absence from the jurisdiction of the potential defendant.

The question is, to what extent should the running of time be postponed or suspended by absence?

If there is to be postponement or suspension, should it apply to any absence during the limitation period or only where there is absence when the cause of action accrued?

Modern facilities for communication and transport undoubtedly have a bearing on the need for such a provision for absence. What was necessary in 1623 may be superfluous to-day.

(a) *Absence of Plaintiff*

The problem here is that the potential plaintiff may not know that he has a cause of action. The Statute of Limitations of 1623 provided that if the potential plaintiff was "beyond the seas", time should not run until his return.

Generally speaking, modern limitations statutes make no provision for the absent potential plaintiff. Ontario legislation has made no provision for him since 1862. (See S.C. 1862, 25 Vict., c. 20.) Nor does the Uniform Act or the English legislation. Nor does the New South Wales Report recommend one.

Furthermore, the "material fact" extension provision later recommended in this Report is to some extent a safeguard.

Accordingly, the Commission recommends:

No provision should be made to postpone or suspend the running of time in the case of the potential plaintiff who is absent from the jurisdiction.

(b) *Absence of the Defendant*

The problem here is that the defendant may be beyond the reach of legal process.

Where legislation does provide for postponement in case of absence, it does so only where the absence exists when the cause of action arises. Time will generally start to run from the moment of the defendant's return to the jurisdiction, no matter how short his stay.

It would be impractical to attempt to suspend the running of time for absences from the jurisdiction which occur after the cause of action arose.

The Statute of Anne of 1705 first provided that if a potential defendant was "beyond the seas", time should not run until his return.

Section 48 of the present Ontario Act provides that, in personal actions (those governed by sections 45 and 46), time will not start to run

where the potential defendant was out of Ontario at the time the cause of action arose until after the return of the potential defendant.

Section 49 makes special provision for causes of actions against joint debtors or contractors, where one or more were outside Ontario and one or more were in Ontario when the cause of action arose.

The Uniform Act (s. 48) provides that, where the potential defendant is out of the province when the cause of action arises, the potential plaintiff may bring the action either:

- (i) within two years of the potential defendant's return to the province, or
- (ii) within the time laid down by the act for such causes of action.

The English legislation of 1939 contains no provision for suspension in case of absence. This was a result of the recommendation in the 1936 Report. That Report stated (see para. 15) that the old statutory provisions deal "with circumstances which may at one time have created hardship but can rarely produce this result at the present day".

The New South Wales Report agrees with the position taken in England. (See para. 6.) The Report states:

To regard absence beyond the seas as itself justifying an extension of the limitation period is to disregard the current ease of transport and communication

It would appear unnecessary to have a postponement for absence in view of the following:

- (1) modern facilities for transport and communication;
- (2) the "beyond the seas" notion is hardly applicable in any event to movement from province to province;
- (3) an action can be brought against the potential defendant even if he is absent from the jurisdiction;
- (4) the provisions in the Rules, by which a person may serve *ex juris*;
- (5) the fact that it is unusual for potential defendants to be outside the province when a cause of action over which the provincial courts have jurisdiction arises (in tort cases it would rarely occur);
- (6) the complexities of modern commercial activities;
- (7) there are difficulties in determining when a potential defendant has "returned" (he may never have been in the province in the first place); and

- (8) it is not generally desirable to keep alive causes of action for an indeterminate time.

The Commission therefore recommends:

No provision should be made to postpone or suspend the running of time in the case of the potential defendant who is absent from the jurisdiction.

2. *Disabilities: Infancy and Mental Incapacity*

Under the present legislation, the disabilities of infancy and mental incapacity are provided for as follows:

- (a) sections 36 to 38 state how these disabilities should be taken into account in actions to recover land or rent (including an entry or distress), as follows,
 - (i) if the person entitled to bring the action was under a disability when the cause of action accrued, he (or a person claiming through him) may bring the action within five years from the time that the person ceased to be under the disability (or, if the person died while under the disability, from the time of death),
 - (ii) the maximum period which such a person has to bring his action is twenty years, and
 - (iii) if such person dies under disability, the person next to bring the action shall receive no further postponement of time by reason of any disability he may be under;
- (b) section 39 states that these disabilities shall only be taken into account in claims for a prescriptive easement or *profit-à-prendre* under sections 30 and 31 which are for an absolute and indefeasible right (i.e., based on the sixty and forty year periods); and
- (c) section 47 provides that, in the personal actions governed by the statute (in sections 45 and 46) the running of the period shall be postponed until the disability ceases in those cases where the disability existed when the cause of action accrued. (See also s. 50 (1).)

Generally, there are no provisions for disability in the various statutes containing special limitations. This produces harsh results. An infant, for example, has, like the adult, only the one year to sue under *The Highway Traffic Act* or *The Medical Act*.

The Uniform Act also deals with land and personal actions separately. (See ss. 6 and 47.) It contains similar provisions to the Ontario statute with respect to land actions, except:

- (i) the extension period for disability is six rather than five years, and

- (ii) the maximum period for suing is thirty rather than twenty years.

With respect to personal actions the Uniform Act is more restrictive than the Ontario statute. The former gives only two years from the cessation of the disability or the normal period, whichever is longer. The latter provides that the full normal period should run from the cessation of the disability.

The Commission considers that it would be desirable to have only one disability provision, governing both land and personal actions.

The English legislation makes no distinction between land and other actions. The period of extension after disability ceases is six years, except in personal injury actions when it is three years. (See s. 22 of the 1939 Act and s. 2 of the 1954 Act.) Nor does the New South Wales Report make a distinction between land and other actions. There, it is recommended that the period of extension after disability cessation be three years.

The English Act sets a maximum period for actions to recover land at thirty years (see s. 22 (c)). The New South Wales Report recommends a maximum period for all causes of action of thirty years, notwithstanding the provisions its Report recommends for postponement, suspension or extension of time.

The New South Wales Report recommends (see para. 242) that its disability provision apply, whether the disability existed at the accrual of the cause of action or occurred after, while time was running. This Commission agrees. It seems absurd that time should not run against a person who was of unsound mind when a cause of action accrued to him but that it should run against him if he became unsound of mind the following day.

Accordingly, this Commission recommends that, where a person entitled to bring an action is under a disability of infancy or mental incapacity:

1. the running of time should be suspended, whether or not the disability existed at the time the cause of action accrued to that person;
2. time should begin to run against a person when he ceases to be under a disability on the following basis:

the person would then be entitled to the longer of either:

- (a) the period which he would have had to bring his action had he not been under a disability, running from the time that the cause of action arose, or
- (b) such period running from the time that the disability ceased except that in no case should that period extend more than six years beyond the cessation of disability;

3. in land actions, the maximum period of twenty years for bringing actions, when disabilities are being taken into account, should be retained.

The question arises whether time should run against persons under a disability if there is someone who is legally responsible for them and who could sue on their behalf. Should the disability provision be qualified so time would run against:

- (i) infants in the custody of a parent or guardian? and
- (ii) persons of unsound mind whose affairs are being administered by a committee or the Public Trustee?

Neither the present Ontario legislation or the Uniform Act contains either of these qualifications. However, Alberta adopted both in 1966 with respect to tort and related actions and the Alberta Commissioners recommended the Alberta provision to the Conference of Commissioners on Uniformity in their 1968 Report.

The 1939 English legislation adopted a qualification by which its disability section only applies, both as to infancy or unsoundness of mind, where the plaintiff proves that the person under a disability was not, at the time when the right of action accrued to him, in the custody of a parent. (See s. 22 (1) (d) and 2 (b).) This provision applies to all the limitation periods established by the English enactment. It does not exempt persons of unsound mind who are not in the custody of a parent. The New South Wales Report contains no provision for exempting infants in the custody of their parents. It does, however, provide a procedure (see s. 53) by which a person *against* whom a cause of action may lie, may give a notice to proceed to the curator of a mentally unsound person. Where an action is brought after such a notice has been given, the person of unsound mind ceases to be under a disability from the date of the giving of the notice. For this provision to apply, the person under disability must have a curator as defined by the Act. The provision does not say what is to happen if an action is not brought after the notice to proceed.

The Commission believes that time should run against a person under a disability if there is someone legally responsible for him and who can sue on his behalf. The Commission would, however, like to see the law more clearly establish the duty of parents to sue on behalf of children in their custody. Furthermore, if time is to run against an infant in the custody of his parent or guardian, it certainly should not do so in actions by the infant against that parent or guardian. The same applies to committees and the Public Trustee with respect to persons of unsound mind.

The English legislation of 1939 places the onus on a plaintiff, seeking the benefit of their disability section, to show that he is not within the qualification, i.e., he was not in the custody of a parent at the time the right of action accrued to him. (See s. 22 (1) (d).) It is fairer that the onus should be on the person claiming the benefit of the section, rather than the defendant.

Generally, the Commission prefers the approach of the Alberta legislation. The provision recommended in the New South Wales Report for persons of unsound mind seems rather cumbersome.

Accordingly, the Commission recommends:

1. that the provision which the Commission has recommended with regard to disability should not apply where:

- (a) an infant is in the custody of a parent or guardian, or

- (b) the affairs of a person of unsound mind are being administered by a committee or the Public Trustee,

except where an action is being brought by the infant against such parent or guardian or by the person who was of unsound mind (or on his behalf, if he is still of unsound mind) against such committee or the Public Trustee;

2. that the onus of showing that a person is entitled to the benefit of the disability provision should rest on the person claiming that benefit.

Finally, the Commission recommends that disability should be defined in such a way so as to extend the meaning of "unsound mind" to all situations where a person cannot manage his affairs because of any disease or any impairment of his physical or mental condition. The New South Wales Report so recommends (see para. 89), and points out that

a person may be in a state of coma or unconsciousness which in fact prevents him from attending to his affairs but which does not amount to unsoundness of mind.

(See *Kirby v. Leather*, [1965] 2 Q.B. 367.)

The recommendations of the Commission with respect to the consequences of disabilities may be summarized as follows:

1. *There should be one general provision relating to disabilities which would apply to all causes of action;*
2. *The running of time should be suspended, whether or not the disability existed at the time the cause of action accrued to that person;*
3. *Time should begin to run against a person when he ceases to be under a disability on the following basis:*

The person would then be entitled to the longer of either:

- (a) *the period which he would have had to bring his action had he not been under a disability, running from the time that the cause of action arose, or*

- (b) *such period running from the time that the disability ceased except that in no case should that period extend more than six years beyond the cessation of disability;*

4. *The provision recommended above with regard to disability should not apply where:*

- (a) *an infant is in the custody of a parent or guardian, or*
- (b) *the affairs of a person of unsound mind are being administered by a committee or the Public Trustee,*

except where an action is being brought by the infant against such parent or guardian or by the person who was of unsound mind (or on his behalf, if he is still of unsound mind) against such committee or the Public Trustee;

- 5. *The onus of showing that a person is entitled to the benefit of the disability provision should rest on the person claiming that benefit;*
- 6. *"Disability" should be defined in such a way as to extend the meaning of "unsound mind" to all situations where a person cannot manage his affairs because of any disease or any impairment of his physical or mental condition;*
- 7. *In land actions, the maximum period of twenty years for bringing actions, when disabilities are being taken into account, should be retained.*

3. *Absence of Knowledge*

(a) *Generally*

Should there be some provision for either the postponement or extension of the running of time where the potential plaintiff is not aware that he has a cause of action?

What is it that the potential plaintiff should be aware of if the running of time is to be postponed or extended? Is mere awareness of the material facts on which a cause of action could be based sufficient? Although a person is aware of these facts, he may still not actually know that he has a cause of action. He may not know the law. In a negligence case, must he know that the potential defendant owed him a legal duty to take care? What if he knows that he has a cause of action but does nothing because he considers his injuries minor, when in reality they are serious? What if he is careless about seeking medical advice as to the extent of his injuries or legal advice as to his rights? These are some of the issues raised in the consideration of an extension provision. As will be seen later, the 1963 English legislation attempts to resolve them.

In the present Ontario statute, the only provision which provides for postponement (or extension) for lack of awareness is section 28.

It provides that, in an action for the recovery of land or rent where there is a concealed fraud, the cause of action shall be deemed to have first accrued when the fraud is discovered or would have been discovered with reasonable diligence. (Section 28 first appeared as section 26 of the English *Real Property Limitation Act, 1833* and was adopted in Upper Canada in 1834.)

However, apart from section 28, the equitable rules with respect to the effect of fraud and mistake on the running of time will provide relief in some instances. The extent to which these rules apply is not clear. The criteria appear to be whether the cause of action was one which was originally exclusively within the jurisdiction of the courts of equity, within the exclusive jurisdiction of the common law courts, or within the jurisdiction of both courts. (See pp. 29-32 of the 1936 English Law Revision Committee Report on Limitations.) This aspect of the problem requires improvement and has been the subject of reform in England, New South Wales and under the Uniform Act. It will be discussed later.

Apart from fraud and mistake, is there a general need for a safety-valve in situations where the potential plaintiff is not aware of the material facts? It should be pointed out that there is the advantage of certainty to be gained where there is a definite period which is not open to extension on the grounds that the potential plaintiff was not aware of this or that material fact. When the limitation period has passed without an action being brought, an extension provision may well invite arguments as to what constitutes material facts as well as false evidence of lack of knowledge. It is not desirable to leave open unnecessarily the possibility of litigation. This is contrary to the general policy of a limitations statute. Thus, the Commission considers that an extension provision for absence of knowledge of material facts should be confined to those areas where it would be essential for a fair operation of the statute. There appears to be no need, for example, to provide for an extension provision in actions for breaches of contract to which the six or ten-year periods will apply or in actions to recover land.

On the other hand, an extension provision may be necessary in order to achieve fairness with respect to actions for which shorter periods apply or with respect to particular kinds of actions. It has been pointed out that fraud and mistake actions have already received special treatment.

It is helpful to see what has been done elsewhere. Apart from a provision relating to fraud and mistake, the 1939 English Act did not provide for the postponement or extension of time where there was absence of knowledge. That statute prescribed a six-year period for contract and tort actions. In 1949, the Tucker Committee recommended that personal injury actions should be subject to a two-year period, but that to provide for "exceptional cases", an application might be made to the courts for leave to bring the action after the two-year period, but not later than six years from the accrual of the cause of action. Leave would only be given if the judge was satisfied that it would be reasonable in all the circumstances to do so. (See para. 22.)

The recommendations of the Tucker Committee were not fully implemented. The 1954 statute established a three-year period for personal injury actions and contained no extension provision.

In 1961, the Davies Committee was appointed, largely as a result of the English Court of Appeal decision in *Cartledge v. E. Jopling and Sons, Ltd.*, [1962] 1 Q.B. 189, to

. . . consider and report whether any alteration is desirable in the law relating to the limitation of actions in cases of personal injury where the injury or disease giving rise to the claim has not become apparent in sufficient time to enable proceedings to be begun

The *Cartledge* case involved lung damage through silicosis. The damage did not become "manifest" until more than six years after the cause of action arose (i.e., when the defendant acted wrongly) and the plaintiff was accordingly held to be out of time and his action was dismissed.

After a through study of the nature and extent of the problem, the Davies Committee concluded:

1. Although it had not been able to estimate the number of cases in which a plaintiff was unable to recover damages for personal injury because he could not ascertain the existence or cause of his injury until the limitation period expired, it was satisfied that the cases were sufficiently numerous to justify some relaxation of the three-year rule;
2. It would not be practicable to limit such relaxation to specific diseases of an occupational origin, or to "diseases" as opposed to "accidents";
3. An injured person should not be liable to have his claim defeated by the operation of the Limitation Act if he satisfies the court that—
 - (i) he could not reasonably have been expected to discover the existence or cause of his injury in time to start proceedings within the limitation period, and
 - (ii) he has started those proceedings within twelve months of the earliest date on which he could reasonably have been expected to make that discovery;
4. No person should be able to take advantage of this relaxation of the three-year rule unless he has obtained (on an *ex parte* application supported by evidence on oath) the leave of a judge to sue out of time; and
5. Consideration should be given to the effect of such relaxation of the three-year rule on a claim for contribution from a joint tortfeasor.

(See para. 44.)

The 1963 English statute carried out the recommendations of the Davies Committee with intricate provisions. The act provides:

General

1. For an extension procedure where:

- (a) there is a claim for personal injuries (to which the three-year period applies), and
- (b) if the material facts relating to the claimed cause of action were, or included facts, of a decisive character which were outside the knowledge (actual or constructive) of the potential plaintiff:
 - (i) until at least twelve months before the three-year period came to an end, and
 - (ii) not earlier than twelve months before the action was brought. (s. 1 (2) and (3).)

2. "Material facts" means one or more of:

- (a) the fact that personal injuries resulted from the negligence, nuisance or breach of duty constituting that cause of action;
- (b) the nature and extent of the personal injuries resulting from that negligence, nuisance or breach of duty; and
- (c) the fact the personal injuries so resulting were attributable to that negligence, nuisance or breach of duty, or the extent to which any of those personal injuries were so attributable. (s. 7 (3).)

3. Material facts shall be taken to be of a decisive character if they were facts which a reasonable person, knowing those facts and having obtained appropriate advice with respect to them, would have regarded as determining that he had an action which would have a reasonable prospect of succeeding and of resulting in the award of damages sufficient to justify the bringing of the action. (s. 7 (4).)

4. "Appropriate advice", in relation to any fact or circumstance, means the advice of competent persons qualified, in their respective spheres, to advise on the medical, legal and other aspects of that fact or those circumstances, as the case may be. (s. 7 (8).)

5. A fact shall be taken to be outside the knowledge (actual or constructive) of a person if, but only if—

- (a) he did not then know that fact;

- (b) insofar as that fact was capable of being ascertained by him, he had taken all such action (if any) as it was reasonable for him to have taken before that time for the purpose of ascertaining it; and
- (c) insofar as there existed, and were known to him, circumstances from which, with appropriate advice, that fact might have been ascertained or inferred, he had taken all such action (if any) as it was reasonable for him to have taken before that time for the purpose of obtaining appropriate advice with respect to those circumstances.
(s. 7 (5).)

(Where the person was under a disability and in custody of a parent, the question of absence of knowledge relates to that parent.)
(s. 7 (6).)

Procedure

- 6. The application for leave may be made either before or after the bringing of the action and is to be made to the court in which the action has been, or is intended to be, brought.
(ss. 2 (2) and (3), and 7 (1).)
- 7. The application is made *ex parte*, except so far as the rules of court otherwise provide when the application is made after the action is brought.
(s. 2 (1).)
- 8. The court shall grant leave if it appears to the court,
 - (a) on evidence adduced by the plaintiff, that he has a cause of action,
 - (b) the requirement of absence of knowledge at the appropriate times has been fulfilled, and
 - (c) where the application is made after the action is brought, that it was outside the knowledge (actual or constructive) of the plaintiff, at the time of bringing the action, that the matters constituting the cause of action had occurred so as to be barred by the running of the three-year period.
(s. 2 (2) and (3).)
- 9. No appeal should lie beyond the Court of Appeal with respect to any application.
(s. 2 (4).)

Special Provisions

- 10. The three-year period to which the act applies may be subject to postponement under the disability or fraud and mistake provisions contained in sections 22 and 29 of the 1939 statute.
(s. 7 (2).)

11. Where the injured person has died, the action must be brought within twelve months of his death. (s. 3.)
12. For the running of time, where a tortfeasor is entitled to a contribution from another tortfeasor. (s. 4.)
13. The application of the act should not interfere with:
 - (a) any defence available by any enactment, other than s. 2 (1) of the Limitations Act, 1939 (which sets the three-year period) or by virtue of any rule of law or equity; or
 - (b) the operation of any enactment or rule of law or equity which would enable the action to be brought after the end of the period of three years from the date on which the cause of action accrued. (s. 1 (4).)
14. Transitional and supplementary provisions and special provisions relating to Scotland and Northern Ireland. (ss. 5, 6 and 8 to 16.)

It can readily be seen that the 1963 legislation seems to provide a very elaborate procedure for what should be a small number of cases. A good question is whether the enactment of such a provision is likely to create more difficulties than the injustices it is intended to prevent. It may be that a simpler provision would be preferable, or perhaps no provision for extension as is now the case.

Manitoba adopted the English extension procedure in 1967. Alberta, on the other hand, decided against the extension provision in its 1966 reforms, for two reasons:

1. The English act was very complicated, and
2. Very few cases would arise in Alberta because the plaintiff would usually be covered by workmen's compensation.

In their 1967 Report to the Conference of Commissioners on Uniformity, the Alberta Commissioners stated:

It will be noted too that the English provision has been used for a purpose that, in our opinion, was never intended. In *Clarke v. Forbes Stuart*, [1964] 2 All E.R. 282 the plaintiff sued Forbes Stuart (Billingsgate) instead of Forbes Stuart (Thames Street). The Court of Appeal granted leave to sue the correct defendant. We question this and make no recommendation for such a provision. It would be possible to include a short and simple provision analogous to section 4 of the Uniform Act which deals with the case of concealment by fraud. If it were confined to cases where the plaintiff does not know he has a cause of action at all, such as the silicosis cases, it might remove hardship. We are not sure that a provision

could be framed without opening the door, e.g., to the person who decided not to sue because he thought the damages trivial and then long after the statutory period, finds out that the damages are more serious.

However, in their 1968 Report to the Conference, the Alberta Commissioners were more definite in calling for an extension provision. Their Report says:

Undiscovered damage can exist both in claims for bodily damage [e.g., silicosis] and property damage [which is sometimes not visible though existing] and in claims against professional men.

We think special provision should be made for these cases. One solution would be to give to the courts discretion to extend the time, e.g., where fairness requires it or along the lines of the English amendment of 1963. That amendment gives to the court discretion to extend the time where the plaintiff applies and where the court finds that material facts of a decisive character were outside the plaintiff's knowledge. This is a lengthy and complicated Act which the courts have already found difficult and which plaintiffs have invoked merely because they sued the wrong defendant or did not think the injury serious. In two recent cases the Court of Appeal has commented on the difficult wording of the Act, and in the second Lord Denning said 'This is one more case on this very complicated and obscure Act.'

Goodchild v. Greatness Timber, [1968] 2 All E.R. 255

Pickles v. National Coal Board, [1968] 2 All E.R. 598

In our opinion it will be more satisfactory to include a section analogous to the concealed fraud section [section 4] so as to provide that in cases of bodily damages, property damage and professional negligence time shall begin to run when the plaintiff has discovered the damage [or perhaps when he reasonably could have discovered it]. This might be unfair to defendants when the plaintiff issues statement of claim 10 or 15 years after the alleged damage so for this reason we recommend an outside limitation of six years from the damage. This would give the plaintiff protection in nearly all cases.

Meanwhile, the New South Wales Law Reform Commission had thoroughly reviewed the English act of 1963 and accepted it in principle, although recommending certain changes. Two major changes are:

1. The court should be given discretion to refuse leave to extend, where the English court would be required to grant leave;

(The situations when a judge might refuse leave would include where "damages are likely to be trivial, if evidence on an essential point is weak, or if a special defence is proved". See para. 283.)

2. Provision should be made under the rules of court requiring applications for leave to be made on notice to the defendant or prospective defendant and enabling the determination of the application to be adjourned to the trial of the action.

(This is instead of the provision in the 1963 act which requires, in general, that an application be made *ex parte*. See para. 289.)

Generally, the draft bill of the New South Wales Law Reform Commission is preferable to the English statute. The provisions are better arranged and, thus, more understandable. One of the difficulties with The English statute of 1963 is that it stands alone, not being an amendment to the 1939 act, and thus its provisions are necessarily more complex than they would be in a consolidated statute.

The 1963 statute, as it applies to Scotland, has recently been reviewed by the Scottish Law Commission in a memorandum containing tentative proposals for the reform of prescription and limitation laws. No changes in the principles laid down in the 1963 statute were recommended, although it was proposed that the relevant provisions should be "re-stated and re-enacted in a Scottish statute dealing comprehensively with prescription and limitation of actions". (See Memorandum No. 9, Prescription and Limitation of Actions, p. 50.)

This Commission believes that there should be an extension provision and it agrees with the Alberta Commissioners that it should apply to:

1. Personal injury actions,
2. Property damage actions, and
3. Actions for professional negligence which are neither personal injury or property damage actions.

As mentioned earlier, this Commission was only prepared to recommend that property damage actions be governed by a two-year period if an extension provision was available to relieve from hardship those persons who were not aware that their property had been damaged.

There are now two questions before the Commission:

1. Should the extension procedure be similar to the 1963 English provisions or in accord with the simple procedure suggested by the Alberta Commissioners?
2. Should there be some upper time limit beyond which time would not be extended, such as six years from the damage as recommended by the Alberta Commissioners?

Insofar as the six-year limit is concerned, the New South Wales extension provision does not even come into play until six years have elapsed from the accrual of the cause of action. The Australians are

obviously not as concerned with a time limit as the Albertans, although the former do have an overall thirty-year limit notwithstanding postponement for any and all purposes. Furthermore, the six-year limit would rule out relief in situations like the silicosis case where the damage was done but was not "manifest". This Commission does not believe there should be an upper limit.

The simplicity of the proposed procedure for extension of the Alberta Commissioners is enticing. It would mean, apparently, having a provision something like:

In actions for personal injuries, property damage or professional negligence, the cause of action shall be deemed to have first accrued when the damage sustained was, or might have been with reasonable diligence, discovered.

Since a substantial number of actions would be covered by such a provision, it might well result in considerable argument as to when time began to run in many cases, with much undesirable confusion in the professional and the commercial world.

To avoid these results, the Commission believes it would be necessary to have a well-worked out extension procedure similar to that in the 1963 English statute and the New South Wales draft bill.

Accordingly, the Commission recommends:

1. *There should be an extension procedure where the plaintiff is not aware that he has a cause of action;*
2. *The extension procedure should only be applicable to:*
 - (a) *Personal injury actions,*
 - (b) *Property damage actions, and*
 - (c) *Professional negligence actions not covered by (a) and (b);*
3. *The extension should be granted where a potential plaintiff was unaware of material facts which, if he were a reasonable person knowing those facts and having obtained appropriate advice with respect to them, would have been of a decisive character in determining that he had an action*
 - (a) *which would have a reasonable prospect of succeeding, and*
 - (b) *result in the award of damages sufficient to justify bringing it;*
4. *Applications for extension should be made to the court which would have jurisdiction over the action and should be required to be made within twelve months from the time the potential plaintiff became aware of the relevant material facts;*

5. *Notice of such an application should be served on the potential defendant.*

(b) *Fraud and Mistake*

It has already been pointed out that the present Ontario act contains only one provision dealing with the postponement of the bar in fraud or mistake situations. This is section 28, which provides that, in an action for the recovery of land or rent where there is a concealed fraud, the cause of action shall be deemed to have first accrued when the fraud is discovered, or would have been discovered with reasonable diligence. In addition to section 28, there are certain equitable rules outside the express terms of the act which postpone the running of time in certain fraud and mistake situations. The extent of these equitable rules is neither clear nor sufficient. (See pp. 29-32 of the 1936 English Law Revision Committee Report on Limitations.)

The Uniform Act contains a number of provisions:

1. Section 3 (1) (g) provides that actions grounded on fraudulent misrepresentation must be brought within six years from the discovery of the fraud.
2. Section 3 (1) (h) provides that actions grounded on accident, mistake or other equitable ground of relief (not otherwise specifically dealt with by the act) must be brought within six years from the discovery of the cause of action.
3. Section 4 provides that:

When the existence of a cause of action has been concealed by the fraud of the person setting up this Part or Part II as a defence, the cause of action shall be deemed to have arisen when the fraud was first known or discovered.

(Part I deals with general limitations other than those respecting land, mortgages, and conditional sale of goods. Part II deals with "Charges on Land". Part III deals with "Land", Part IV with "Mortgages of Real and Personal Property", Part V with "Agreements for the Sale of Land", Part VI with "Conditional Sale of Goods" and Part VII with "Trusts and Trustees". Part VIII contains certain general provisions.)

4. Section 29 (1), which is in Part III and applies only to that Part, is similar to section 28 of the present Ontario act. Section 29 (2), which is not in the Ontario act, protects *bona fide* purchasers for valuable consideration from the application of subsection (1).

The Commission believes it would be preferable to have one provision of general application rather than the several contained in the Uniform Act. Furthermore, sections 4 and 29 of that act are confined to particular Parts of the statute. No similar sections are provided for Parts IV to VIII.

Both the English Act of 1939 (see s. 26) and the proposed bill recommended by the New South Wales Law Reform Commission (see ss. 55 and 56) have such a general provision. The English Act postpones the running of time:

1. when an action is based on the fraud of the defendant,
2. where the right of action is concealed by the fraud of the defendant, and
3. the action is for relief from the consequences of a mistake.

Time begins to run only when the plaintiff has discovered the fraud or mistake, or could with reasonable diligence have discovered it.

The New South Wales Report comments on the English provision as follows:

Section 26 of the Imperial Act, in dealing with fraud, speaks of an action "based upon the fraud of the defendant or his agent or of any person through whom he claims or his agent" and of a right of action being "concealed by the fraud of any such person as aforesaid". The word "fraud" is used in one sense in the first of these passages and in another sense in the second. In the first passage, "fraud" means, at least primarily, the deceit which may be an ingredient in a common law action for damages. In the second passage, "fraud" connotes wilfulness in the concealment of the existence of a cause of action, whether the cause of action involves deceit in the common law sense or not. See Franks, at p. 202; Halsbury's Laws of England, 3rd Edition, Volume 24 (1958), at pp. 316, 317. These divergent uses of the word "fraud" may be misleading. Section 55 (1) therefore speaks, on the one hand, of a cause of action based "on fraud or deceit" and, on the other hand, of a cause of action being "fraudulently concealed". The change in wording is small, but may help to avoid confusion.

In section 26 of the Imperial Act of 1939, the fraudulent concealment of a cause of action does not extend to the fraudulent concealment of the identity of the defendant. Thus there is no extension of the limitation period for an action against a man who steals a motor car and conceals, however fraudulently, his identity from the owner of the car: *R.B. Policies at Lloyd's v. Butler* ([1950] 1 K.B. 76). We think that there should be an extension of time in such a case and section 55 (1) (b) so provides. The innocent purchaser is protected by section 55 (3).

(See paras. 269 and 270.)

While this Commission is in favour of a general provision like section 26 of the 1939 English act, it is in agreement with the suggested improvements in that section made by the New South Wales Commission.

Accordingly, this Commission recommends that:

1. *There should be one general provision dealing with the postponement of time in fraud and mistake cases.*
2. *Such a provision should apply where:*
 - (a) *an action is based on fraud or deceit,*
 - (b) *a right of action, or the identity of the person against whom the action lies, is fraudulently concealed, and*
 - (c) *an action is for relief from the consequences of a mistake.*
3. *In such cases, time should not begin to run until the plaintiff has discovered the fraud, deceit, fraudulent concealment or the mistake, as the case may be, or could with reasonable diligence have discovered it.*
4. *Such a provision should not operate to the detriment of a bona fide purchaser for value.*

4. *Pleading and Procedural Problems*

(a) *Set-offs, Counterclaims, Adding of Parties, and Tortfeasors' Claims for Contribution*

There are six different procedural situations which create difficulties once time has run, although the action has been commenced in time. These are:

1. Set-offs,
2. Counterclaims by the defendant against the plaintiff in the original action,
3. Counterclaims by which a new party is added,
4. Applications to add a new party under Rule 136 of the Rules of Practice,
5. Third party proceedings, and
6. Claims for contribution by a tortfeasor under *The Negligence Act*, which are being enforced by a separate action.

The present statute mentions only set-offs (s. 55) and simply states that its provisions apply to claims by way of set-off. Section 11 of the Uniform Act contains a similar provision, although it applies to counterclaims as well as set-offs. It is not clear what effect either of these provisions is intended to have. The case law is that a defendant cannot raise by either set-off or counterclaim a debt which is barred and that, for limitation purposes, the set-off is regarded as having been made at the time the writ was issued, while a counterclaim is regarded as having been made at the date it is pleaded.

Neither the present statute nor the Uniform Act are adequate.

The English provision (s. 28) states that

. . . any claim by way of set-off or counterclaim shall be deemed to be a separate action and to have been commenced on the same date as the action in which the set-off or counterclaim is pleaded.

The English provision does not include third party proceedings. It is criticized in the New South Wales Report (para. 341) insofar as a new party may be added by way of counterclaim. The Report states:

. . . in such a case it is not right that the running of the limitation period should be stopped by the commencement of proceedings to which he is not a party.

The Report recommends the adoption of the English provision with the qualification that, where a new party is added, the action against the new party is not to be taken to have been brought until he is made a party to the claim. (See s. 74.)

The 1966 Alberta legislation has a different approach. Section 60 (1), which only applies to tort and related actions, provides that, in counterclaim and third party proceedings lapse of time is not to be a bar "with respect to any claims relating to or connected with the subject matter of the action".

(Section 60 contains no reference to set-off, presumably as set-off would not arise in tort actions. Alberta does, however, have the uniform provision referred to above. See s. 13.)

Subsection (2) of section 60 exempts the operation of subsection (1) if the result would enable a claim to be made against a person who in turn had a claim against the claimant, relating to the subject matter of the action, which has become statute-barred. Subsection (2) would obviously apply where X sues Y out of time and Y counterclaims against X. Subsection (1) cannot operate to remove the bar for Y's claim, if, in fact, X's claim is statute-barred. Subsection (2) could also apply where a new party is added. A sues B in time. B wishes to bring in C but he is out of time. He can do so under section 60 provided C does not have a statute-barred claim against him.

In their 1967 Report to the Conference of Commissioners on Uniformity, the Alberta Commissioners stated:

We turn now to the subject of counter-claims and third party proceedings. Generally, these proceedings must be brought within the statutory period. We think, however, that they should be permitted afterwards as long as they relate to the subject matter of the action. Such provisions are now found in some of the special limitations for automobile accidents in Highway Acts. Section 60 of Alberta's amendment of 1966 is such a provision.

(See p. 174 of the Proceedings.) In their 1968 Report, the Alberta Commissioners restated this position. However, they also recommended a general provision by which the court would be able to add or substitute parties at any time, "on the basis of no prejudice to the defendant". (See pp. 10-11 of their Report.)

The Ontario *Highway Traffic Act* contains the following provision:

. . . when an action is brought within the time limited by this Act for the recovery of damages occasioned by a motor vehicle and a counterclaim is made or third party proceedings are instituted by a defendant in respect of damages occasioned in the same accident, the lapse of time herein limited is not a bar to the third party proceedings. (See s. 147 (3).)

The Commission agrees with the broad approach taken by *The Highway Traffic Act* provision. The purpose of the Statute should be to ensure that matters be litigated in a reasonable time. Once an action has been started, then all matters which were not statute-barred when the writ was issued and which might be dealt with at the trial of that action, should be capable of being brought before the court.

Accordingly, the Commission recommends:

1. *Any claim by way of set-off, counter claim, the adding of parties under Rule 136, or third party proceedings shall be deemed to be a separate action and to have been commenced on the same date as the action in which the set-off or counter claim is made, or the parties added under Rule 136, or the third party proceedings are taken; and*
2. *Section 9 of The Negligence Act should be repealed and a similar provision should be included in the proposed statute.*

(b) *Amendment of Pleadings*

(i) *General Amendment*

The problem was put by the Alberta Commissioners in their 1967 Report in this way:

The next point has to do with amendments to pleadings after the statutory period. In speaking of amendments, we exclude the adding or changing of parties with which we shall deal later. It is settled that an amendment should not be permitted after the time has expired if the amendment sets up a new cause of action. This is often hard to determine. In a claim for damage to an automobile, may an amendment be made to add a claim for personal injuries? English authority said no. However, the Supreme Court of Canada, in June 1967, upheld an Alberta judgment which holds that such an amendment may be made [*Franks v. Cahoon*, 58 W.W.R. 513]. We recommend consideration of a provision such as section 44 (11) of Saskatchewan's Queen's Bench Act R.S.S. 1965, c. 73. This provision enables the Court to permit the amendment of any

pleading as it deems just, notwithstanding that the right of action would have been barred. However, it does not apply to amendments involving a change of parties other than one caused by death of a party.

(See p. 174 of the Proceedings.)

Section 44 (11) of the Saskatchewan Queen's Bench Act provides:

Where an action is brought to enforce any right, legal or equitable, the court may permit the amendment of any pleading or other proceeding therein upon such terms as to costs or otherwise as it deems just notwithstanding that, between the time of the issue of the writ and the application for amendment, the right of action would, but by reason of action brought, have been barred by the provisions of any statute; provided that such amendment does not involve a change of parties other than a change caused by the death of one of the parties.

In their 1968 Report, the Alberta Commissioners again recommended the Saskatchewan provision, stating that the modern trend is toward leniency in permitting amendments and that this liberal trend should be put in statutory form.

(ii) *Change of Parties*

The question of change of parties has always been a matter of difficulty. The Alberta amendments of 1966 contained a provision, which was recommended in their 1967 Report by the Alberta Commissioners to the Conference of Commissioners on Uniformity. The Report stated:

We recommend consideration of a provision like section 61 in Alberta's 1966 amendments. This permits change of parties in three cases:

- (1) in motor vehicle cases where the registered owner was not the actual owner and the plaintiff's error was excusable;
- (2) where the plaintiff is under disability, or is the estate of a deceased person and the action has been brought by the wrong party provided no one has been misled;
- (3) where the original defendant was dead when action was brought.

(See p. 174 of the Proceedings.)

However, in 1968, the Alberta Commissioners came to a different conclusion. Their 1968 Report states:

As for 2, the harshness of the rule against adding or substituting parties where there is no prejudice whatever to the defendant appears in many cases. A recent example is *McPhee v. Ahern* 49

WWR 189 (1964) B.C. where one of the plaintiffs was Molson's Western and it should have been their subsidiary Sicks Alberta. We recommend a provision permitting the court to add or substitute parties at any time, on the basis of no prejudice to the defendant. Alberta's 1966 provisions permit changes of parties in three special cases but we favour a general clause.

(See pp. 10-11 of their Report.)

The Commission favours one general amendment procedure similar to that contained in the Saskatchewan legislation. It should be sufficiently wide to cover change of parties.

Accordingly, the Commission recommends:

In any action, the court should be able to allow the amendment of any pleading or other proceedings, or an application for a change of party, upon such terms as to costs or otherwise as the court deems just, notwithstanding that, between time of the issue of the writ and the application for amendment or change of party, a fresh cause of action disclosed by the amendment or the cause of action against the new party would have been barred by a limitation provision.

5. Generally

It has been suggested that there should be a general extension provision. A discretion could be given to the courts to waive *The Limitations Act* providing, for example, the judge believed it would be reasonable to do so in the circumstances and the defendant would not otherwise be prejudiced.

Certainly, the effect of a limitation statute is guillotine-like. Once time has run, the potential plaintiff is abruptly cut off from securing the legal remedies available to him.

There undoubtedly will be persons who are not aware of the limitations provisions. Even lawyers occasionally by oversight neglect to issue a writ in time. Sometimes this occurs while they are negotiating for a settlement with the other side. The client will, of course, have an action against his lawyer for negligence. However, the client may well suffer if his claim was large and his lawyer is of limited means and uninsured.

Death or serious illness of a lawyer may result in clients being deprived of their actions. However, this is only likely where the lawyer is practising on his own. When he is a partner or employee in a firm, it is up to the firm in these circumstances to ensure that the clients are adequately advised as to the bringing of their actions.

The Commission is strongly opposed to any open-ended general extension provision. It would defeat the purpose of the statute which is to put an end to unlitigated disputes in a definite and reasonable way which is readily understandable to lawyer and layman.

D. ACKNOWLEDGMENT AND PART PAYMENT

1. *Introduction*

An acknowledgment that a right exists will make time begin to run anew in certain causes of action. Part payment of a debt is a particular form of acknowledgment, which in some instances receives separate legislative treatment. The effect of time running afresh is to postpone the bar.

The Statute of 1623 did not refer to acknowledgment or part payment. However, the courts decided at an early stage that a fresh promise to pay an existing debt would start time running again. This judge-made law received statutory recognition in England with the passage of the *Statute of Frauds Amendment Act, 1828*. (See s. 1.) The relevant provision of that statute was adopted for Upper Canada in 1850 (13 & 14 Vict., c. 61) and, with minor modifications, appears as section 51 of the current Ontario enactment. There are also ten other sections in that statute dealing with acknowledgment and part payment: these are mainly related to land actions and were also copied from various English statutes of the last century.

The present Ontario statute provides that acknowledgments will start time running afresh as follows:

1. An acknowledgment in writing of the title of a person entitled to land or rent, for the purposes of making an entry or distress, or bringing an action for the recovery of the land or rent;
(s. 13)
2. An acknowledgment in writing of the title of a mortgagor, or of the mortgagor's right to redeem, made by a mortgagee who is:

(i) in possession of the mortgaged land,

(ii) in receipt of the profits of the land, or

(iii) in receipt of any rent comprised in the mortgage,

for the purpose of bringing a redemption action; (s. 19)

(NOTE: If there are two or more mortgagors (or persons claiming through the mortgagor or mortgagors), such an acknowledgment given to any one of them, or his agent, is as effectual as if it had been given to all such persons. See s. 20.)

(NOTE: If there are two or more mortgagees (or persons claiming through the mortgagee or mortgagees), such an acknowledgment is only effectual against the person giving it. See s. 21.)

3. A part payment of principal or interest secured by a mortgage, for the purpose of making an entry or bringing an action to recover the mortgaged land; (s. 22)
4. An acknowledgment in writing of a right to recover money charged on land or rent, or a right to recover a legacy, given by the person by whom it is payable, for the purpose of bringing an action to enforce that right; (s. 23 (1).)

(NOTE: The section also expressly provides that a part payment will have the same effect as an acknowledgment in writing.)

5. An acknowledgment in writing in respect of:

(i) arrears of rent,

(ii) arrears of interest in respect of any money charged on land or rent,

(iii) arrears of interest in respect of any legacy, or

(iv) any damages in respect of such arrears of rent or interest,

for the purpose of the recovery of such arrears or damages by distress or action; (s. 17)

6. An acknowledgment in writing of a person liable on an indenture, specialty, judgment or recognizance; (s. 50)

(NOTE: The section also expressly provides that a part payment will have the same effect as an acknowledgment in writing.)

7. An acknowledgment of a simple contract or debt. (See s. 51.)

(NOTE: Section 51 (1) confines the judge-made rule referred to earlier in this part to situations where the acknowledgment is in writing and signed by the party chargeable thereby or his agent. The section does not apply to part payments. See s. 51 (2).)

(NOTE: The wording of section 51 varies from the original provision enacted in 1850, which had been copied from the English statute of 1828. The variation dates from 1859. See C.S.U.C. 1859, c. 44, s. 2. In the 1859 consolidation, the section was rearranged and inadvertently, apparently, the draftsman introduced from the preamble what is now clause (a). Actions of account or upon the case were not originally included in the section and it is difficult to see how clause (a) can have any relevance to the "new or continuing

contract" to which the section refers. There appears to be no reported case of a claim to start time running anew in an action upon the case (e.g., negligence) on the basis of an acknowledgment. Clause (a) should be removed from the section.)

Acknowledgments of liability in respect of causes of actions other than those set out above do not start time running afresh. Thus, an acknowledgment of liability in tort or for damages for breach of contract is ineffective in this respect. Acknowledgments of liability in contract are only effectual where the claim is for debt. (See Halsbury's Laws of England, 2nd ed., vol. 20, p. 627.)

The various provisions of the Ontario statute referred to above providing for time running afresh where there is acknowledgment (ss. 13, 17, 19, 22, 23, 50 and 51) were all taken from English limitation statutes of 1828, 1833, 1837, as revised in 1874. See Appendix A. The comments made on the English statutes in the 1936 Wright Report are therefore appropriate and will be dealt with shortly.

On the other hand, the present Ontario statute contains a provision with respect to joint liability which is different from its English counterpart in two respects. Section 52 of the Ontario Act provides that, where two or more persons are jointly liable as joint debtors, contractors, obligors, covenantors, or executors or administrators of any debtor or contractor, the acknowledgment of one is not effectual as to the other. (See also s. 53.) This provision clearly covers specialties, although when first enacted in 1850 it did not. The words "obligors" and "covenantors" first appear in the 1910 consolidation statute. (See S.O. 1910, c. 34, s. 56. See also R.S.O. 1897, c. 145, s. 2.) The section as it was enacted in 1850 was copied from the English *Statute of Frauds Amendment Act, 1828* and only applied to simple contracts. Thus in England, an acknowledgment of a specialty debt by one co-debtor would bind the other. (The general position is that an acknowledgment will bind a co-debtor, except where there is an express statutory provision to the contrary.) The English position was modified in the *Mercantile Law Amendment Act, 1856* (see s. 14), which provided that a part payment by one debtor should not bind another in simple contracts and specialties. The result in England was that an acknowledgment, except a part payment, with respect to a specialty bound a co-debtor. In Ontario, what is now section 52 has given protection to co-debtors on specialties since 1910.

The second difference between the Ontario and English positions on joint liability is with respect to the statutory treatment of part payment. The English *Statute of Frauds Amendment Act, 1828* (s. 1) operated so as to permit a part payment by one co-debtor to bind another. This was achieved by a proviso that qualified a section containing the equivalent of what are sections 51, 52 and 53 of the present Ontario statute. This position was changed in England by the *Mercantile Law Amendment Act, 1856* as mentioned above. The same position had been achieved in Ontario earlier, in 1850, when the 1828 legislation was adopted for Upper Canada. It was adopted, omitting the proviso with respect

to part payment. That proviso was later reinstated in 1910 but only as a qualification to what is now section 51 (1). (See S.O. 1910, c. 34, s. 55 (1). See also *Creighton v. Allen* (1867), 26 U.C.Q.B. 627.) It is clear from the words at the end of section 52 that a part payment by one co-debtor is treated in the same way as a written acknowledgment. This wording with respect to part payment dates from 1856 in England (*Mercantile Law Amendment Act, 1856*, c. 97, s. 14) but in Ontario from 1850 (S.C. 1850, c. 61, s. 1).

The Commission believes that the various provisions of the Ontario statute dealing with acknowledgments should be grouped together and reorganized so that they can be more readily understood.

2. *English Reforms*

There are also certain inconsistencies and problems in the present provisions. These have been pointed out by the Wright Committee in 1936, (see paras. 19 to 21) with reference to the equivalent English provisions. The comments and conclusions of the Wright Committee are set out below with reference to the sections as they appear in the Ontario statute:

1. There are differences as to whom and by whom acknowledgments may be made, as follows:

- (a) An acknowledgment by an agent is not sufficient under sections 13 and 19 but is sufficient under sections 17, 23, 50 and 51; and,
- (b) An acknowledgment to a third party is sufficient under section 50 but under all the other provisions it must be given to the other party concerned or his agent.

The Wright Committee recommended that:

- (a) Acknowledgment by an agent should be effective in all cases; and,
- (b) In no case should an acknowledgment be effective unless given to the other party concerned or his agent.

(These two recommendations were implemented in section 24 (2) of the 1939 Act.)

2. There are differences as to whether acknowledgments can be given effectively after a limitation period has lapsed. An acknowledgment after time has run is insufficient under sections 13 and 19, but is apparently sufficient under sections 17, 23, 50 and 51. The Wright Committee pointed out that the reason an acknowledgment under sections 13 and 19 could not be good after time had run was that title was extinguished in such instances. The Wright Committee considered whether or not it was desirable to render ineffective all acknowledgments after the statute had run. However, the Wright Committee

came to no conclusion on that point, postponing its decision until it had dealt with the question of whether the running of the statute should not in all cases extinguish the right as well as bar the remedy. As the Wright Committee subsequently rejected general extinguishment of title (see para. 24), it did not pursue the desirability of the general invalidity of acknowledgments given after time had run. It did, however, recommend that acknowledgments made after the statute has run should bind only the persons who made them and their personal representatives. (This recommendation was given effect to in the provisos to subsections (5) and (6) of section 25 of the 1939 Act.)

3. An acknowledgment (including a part payment) of a simple contract debt is only effective if it amounts to a promise to pay whereas an acknowledgment of a specialty debt is effective whether or not such a promise is present. See sections 50 and 51. The Wright Committee pointed out the great difficulties that had resulted from having to decide whether particular acknowledgments of simple contract debts amounted to promises to pay. It recommended that such acknowledgments be put upon the same footing as those of specialty debts. (This was given effect to by section 23 (4) of the 1939 Act.)

It has already been pointed out that the Ontario statute is different than the English law with respect to the effect of an acknowledgment of one co-debtor on another. Under section 52 of the Ontario enactment, the latter co-debtor will not be affected whether the acknowledgment (including a part payment) is of a simple contract debt or a specialty. In England, acknowledgments (except part payments) of specialty debts do bind co-debtors. The Wright Committee recommended that this difference between specialty and simple contract debts be removed and that acknowledgments, except for part payments, should not affect co-debtors under either kind of debt. However, the Wright Committee also recommended that part payments should bind co-debtors. The Committee stated (at p. 28):

The ground of the distinction is that a part payment operates for the benefit of all persons who are liable, and it would seem fair that if they take the benefit they should take it with its accompanying disadvantages.

Its recommendation in this respect was, however, subject to the qualification that co-debtors would not be bound if the part payment was made after the limitation period had lapsed as then "the payment can be of no particular advantage to persons in whose favour the statute has already run". The only persons bound by the payment would be the person making it and his executors or administrators. (These recommendations were implemented by s. 25 (5), (6) and (7) of the 1939 Act.)

The 1939 statute made a change which the Wright Committee did not consider. Where a mortgagee is in possession of mortgaged land, section 23 (3) makes time run afresh in a redemption action from the

receipt of the last part payment on the mortgage or an acknowledgment of the title of the mortgagor. Prior to 1939, the English legislation provided that time run anew only in the case of acknowledgment. Section 19 of the Ontario act only provides for acknowledgment starting time running again.

3. *New South Wales Proposals*

The Law Reform Commission of New South Wales, whose limitations laws are much the same as Ontario's, reviewed the Wright Committee's recommendations and sections 23 to 25 of the 1939 English Act. Its 1967 Report on the Limitations of Action recommends a number of changes. (See paras. 248 to 267 and s. 54.) These are set out below:

1. The term "confirmation" should be used as a generic name to cover both acknowledgments and part payments,
2. All limitation periods should be capable of running anew where there is a confirmation,
3. Confirmation should only be effective if made before the expiration of a particular limitation period,
4. A confirmation by one co-debtor, including a part payment, should not bind another co-debtor,
5. A confirmation of a cause of action to recover income falling due at a particular time should operate as well as a confirmation with respect to income falling due at a later time on the same account.

The second of these proposals is the most radical. The New South Wales Commission gave two illustrations to justify a general application of the acknowledgment principle.

- A. X steals Y's car. An acknowledgment by X does not affect the running of time. If X then sells the car to Z, there would then be a promise imputed to X to turn over the proceeds to Y and an acknowledgment of that promise would start time running afresh. On the other hand, if the car had not been stolen at all but sold by Y to Q without the price being paid, an acknowledgment by Q is, of course, effective.

Why, the New South Wales Commission asks, should a thief (before he sells) not be bound by an acknowledgment if an ordinary debtor is?

- B. M is insured with P Co. against claims for personal injuries to third parties. A third party, T, is injured so as to give M a claim against P Co., which M makes. P Co. admits liability in writing to M and, as the agent of M, to T. The admission will start time running afresh as between M and P

Co. but will have no effect so far as T is concerned. In such circumstances, it was pointed out, a court has let T have the benefit of the acknowledgment, as the evidence disclosed a promise by P Co. not to plead the limitation period. That case, the New South Wales Commission said, may be regarded as a step towards the development of a common law doctrine of acknowledgments of claims to unliquidated damages.

To the objection that the facts relating to claims for unliquidated damages, whether in contract or tort, are likely to be more complicated and less the subject of written record than are claims for liquidated sums, the Commission said:

. . . while it has a foundation in ordinary experience, we think that an acknowledgment, likely as it must be to encourage the claimant to defer taking proceedings, will in general not be given carelessly and, if given carelessly, should be the occasion of loss to the person giving the acknowledgment rather than to the claimant.

The New South Wales proposal that acknowledgments should only be effective if given before the limitation period lapses is tied in to its Commission's larger objective of extinguishment of rights once time has run. Unlike the Wright Committee, the New South Wales Commission decided in favour of a general extinguishment of rights. Thus, the New South Wales Commission proposal that acknowledgments after time has lapsed be ineffectual would prevent revival by "accident, strategem, or artifice".

As to the recommendation that a "confirmation" by a person jointly liable with another should not bind that other, the New South Wales Commission was critical of the Wright Committee's distinction between part payments and other acknowledgments in this respect and the legislative complexities that resulted. It may be recalled that in England, a part payment made by one co-debtor binds other co-debtors whereas a mere acknowledgment in writing does not. The New South Wales Commission thought it incongruous that, if A and B were jointly liable for a thousand dollars, a payment of one dollar by A when the period was about to lapse should start time running afresh against B. They also felt that the English legislation was apt to encourage under-hand transactions between a creditor and one of his co-debtors.

4. *The Uniform Act*

A number of comments should be made about the Uniform Act.

1. Like the Ontario statute, it contains various provisions on acknowledgment scattered throughout its length. See sections 7, 8, 9, 12, 13, 30, 31, 33, 34, 36 and 39.
2. Section 7 dates from the original Uniform Act of 1931, except that the words "to an action on a judgment or on an order for the payment of money or" were added in 1944. (See 1943 Proceedings at pp. 117-118 and 1944 Proceedings at pp. 103 and

107.) It had been thought that actions on judgments and orders for the payment of money were not actions for the recovery of money as a debt, although there was no case law to that effect. So far as judgments and orders are concerned, the result is not to make time run afresh in the usual way. Judgments and orders are subject to a ten-year period, but an acknowledgment in respect of them only permits time to run for a further six years. Such an acknowledgment is thus not effective if given in the first four years of the ten-year period.

3. Section 7 provides for an extension of time for written promises, acknowledgments and part payments and expressly removes the necessity for a promise in respect of acknowledgments.
4. Sections 8 and 9 are similar to sections 52 and 53 of the Ontario Act. Thus, acknowledgments (including part payments) by one co-debtor are not effectual against another co-debtor.
5. All the provisions in the Uniform Act relating to acknowledgments allow acknowledgments made by the person liable, or his agent, to the person entitled to enforce the right, or his agent, except with respect to acknowledgments given to a seller's agent under a conditional sale of goods as provided for in clause (b) of section 39. This one exception appears to have been made by inadvertence as the seller's agent is expressly included in clause (a) of section 39 which deals with part payments.

5. *Recommendations*

This Commission considers that acknowledgment should be dealt with generally and not piecemeal as is the case in the present Ontario Act and in the Uniform Act. Acknowledgment receives a general treatment in sections 23 to 25 of the 1939 English Act and section 54 of the draft New South Wales bill. The latter, in particular, is commendable for its simplicity, although this Commission does not believe that it is desirable to coin a new term "confirmation" only for the purpose of treating acknowledgments and part payments in the same way.

The Commission agrees with the Wright Committee's recommendations that an acknowledgment by an agent should always be sufficient and that in no case should an acknowledgment be effective unless given to the person entitled to the particular right or his agent. It also agrees that the acknowledgments should be effective whether or not there is a promise to pay. In this respect, it will be sufficient if the legislation provides in a positive way what the effect of an acknowledgment and a part payment is to be, as do the English and New South Wales provisions. It leads to unnecessary complexity to also deal with the effect of promises as does section 7 (1) (a) and (2) of the Uniform Act.

The Commission believes that part payments should be treated in the same way as other acknowledgments. It agrees with the New South Wales Commission that the grounds put forward by the Wright

Committee for its recommendation that a part payment by one co-debtor should bind another co-debtor are not convincing. This Commission is satisfied with the law as it is in section 52 of the present statute, although the wording of that provision could be improved upon. (See, for example, section 54 (6) of the draft New South Wales bill.)

The Commission also believes that, in a redemption action, the receipt of a part payment by a mortgagee in possession should be regarded in the same way as an acknowledgment of title by the mortgagee now under section 19 of *The Limitations Act*. It was pointed out earlier that such similar treatment was accorded part payment in section 23 (3) of the 1939 English statute.

There are two major points to be dealt with:

1. Should the principle that acknowledgment starts time running afresh apply to all causes of action (as recommended in New South Wales)?
2. Should acknowledgments made after time has run be ineffectual (as recommended in New South Wales but decided against by the Wright Committee)?

The second problem will be considered first. Both the Wright Committee and the New South Wales Commission made their answers to this question hinge on the larger issue of whether or not rights should be extinguished by the lapse of time. On the larger issue, the New South Wales Commission decided in the affirmative and the Wright Committee in the negative. Thus the New South Wales Commission recommended that acknowledgments after time had run should be ineffective and the Wright Committee was prepared to allow such acknowledgments to take effect. Since this Commission does recommend a general extinguishment of right once time has expired, it would agree with the New South Wales position. Once time will have run, there will be nothing to acknowledge.

On the broad issue of whether acknowledgments should apply to all causes of action, this Commission felt inclined to follow the New South Wales Commission. Why should a person who acknowledges the the right of another to an unliquidated sum be treated differently than he who acknowledges the right to a liquidated amount? Why should not time run afresh against a person who has converted another's property to his own use or who has negligently damaged the person of another, if the person liable acknowledges that liability?

This Commission, however, considers the main objection raised by the New South Wales Commission itself to outweigh the advantages to be gained by extending the acknowledgment principle generally. It will be recalled that the Australian body pointed out that a claim for unliquidated damages, whether in contract or tort, will be more complicated and less the subject of written record than claims for liquidated sums. It is this Commission's view that the New South Wales proposal might well create more difficulties than it would resolve. Furthermore,

the nature of the debtor-creditor relationship is entirely different from that of the tortfeasor to the injured party. The role of acknowledgment in the former has a logical place in arrangements for giving extra time for payment.

Accordingly, this Commission does not recommend a general extension of the acknowledgment principle.

The Commission recommends as follows:

1. *There should be one general provision dealing with acknowledgment;*
2. *Acknowledgment (including a part payment) should start time running afresh where time has not yet lapsed and there is a right:*
 - (a) *to recover any liquidated sum,*
 - (b) *to recover land, and*
 - (c) *with respect to charges on property*
 - (i) *to enforce the charge, or*
 - (ii) *to obtain relief from the enforcement of the charge;*
3. *An acknowledgment (including a part payment) to be effective must in all cases be given by the person liable or his agent to the person entitled to the right or his agent;*
4. *An acknowledgment, other than a part payment, must be in writing and signed by the person (or his agent) making the acknowledgment;*
5. *It should not be necessary to show a promise to pay; and*
6. *No change should be made in the Ontario rule that an acknowledgment (including a part payment) by one co-debtor does not bind another co-debtor.*

CHAPTER VII

MISCELLANEOUS PROBLEMS

S U M M A R Y

- A. EXTINGUISHMENT OF RIGHT
- B. CONFLICT OF LAWS
- C. FEDERAL CAUSES OF ACTION
- D. THE CROWN

A. EXTINGUISHMENT OF RIGHT

It has long been said that the statute bars the remedy but does not extinguish the right. The only provision in *The Limitations Act* which provides for extinguishment of right is section 15, dealing with actions to recover land. At the end of the ten-year period during which the action may be brought, not only is the claimant barred from claiming his remedy but his right (i.e., title) is extinguished. Apart from section 15, the right still exists once the time for bringing the action has passed and the bar to the remedy has been raised. Thus, in tort, contract and personal property actions, the claimant has lost the remedy, although he still retains the right which would have entitled him to that remedy. In virtually all cases, the practical result is the same as if the right were extinguished. A right without a remedy is valueless.

This distinction has been much criticized, particularly in the area of conflict of laws, where the courts have characterized statutes of limitation as procedural or substantive according to whether they provided for extinguishment of title or merely barred the remedy. Dean Falconbridge in his article, *The Disorder of the Statutes of Limitation* (21 *Canadian Bar Review* 670 at p. 788), pointed out:

It may also be observed generally that "right" and "remedy" are ambiguous and misleading terms. A "right" is not something which has an objective existence independently of a "remedy". . . .

Franks, the author of the most recent English treatise on limitations states (at p. 30) with reference to the statute barring the remedy but leaving the right:

This state of affairs is very well settled by authority but is, it is suggested, unsatisfactory since it fails to eliminate uncertainty (the prime benefit of the Statute)

Certainly, the purpose of a limitation statute is to prevent persons from suing after the lapse of a particular time. The Commission believes

that it is both more realistic and theoretically sound for the legislation to state that the claimant's right no longer exists once time has expired, rather than to merely bar the remedy.

The Wright Committee in England decided against recommending a general extinguishment. Its report referred to nine instances where the continuing existence of the right after the remedy was barred had some significance. (See p. 32 et seq.)

However, the New South Wales Commission thoroughly reviewed the nine situations mentioned in the Wright report, as well as a further instance which had arisen in Tasmania, and concluded that there should be a general extinguishment. (See paras. 306 to 323.)

The ten situations discussed in the New South Wales Report are set out below and examined.

1. Where a debtor pays money on account of debts, some of which are statute-barred and some not, and the money is not appropriated to any particular debt, the creditor may apply the money to one of the statute-barred debts. The New South Wales Commission considered it undesirable for a creditor to be able to recoup his losses in this way. Its report stated that

... The shadowy continuance of the right without remedy is an unnecessary complication of the law and may conceivably lead, on the one hand, to manoeuvres of the creditor with a view to obtaining payment without action and, on the other hand, to the debtor abstaining from further business transactions with the creditor and to that extent restricting his freedom of action. The continued existence of the right after the law has taken away the remedy is a situation which, we think, a modern system of law should avoid.

This Commission agrees with the above statement. It noted, as well, that the Wright Committee did not consider this instance of importance in practice.

2. An executor may, in the case of a specific or residuary legatee under a will, deduct from the legacy the amount of any statute-barred debt from the estate (if payment of the debt would have swelled the fund out of which the legacy is payable). Thus the legatee is treated as already receiving a part of the estate equivalent to the debt.

Although the Wright Committee felt that the extinguishment of the right to the debt would have a doubtful effect inasmuch as the legatee ought to be treated as already having received part of his legacy, the New South Wales Commission disagreed. It pointed out that the testator had the remedy in his own hands: he could have sued or he could say in his will that the legacy is to be reduced by the amount of the debt.

This Commission agrees with the New South Wales position. The testator had the opportunity to sue and refrained. He also could have revised the terms of his will.

3. An executor may pay a statute-barred debt, even one owing by the estate to himself. However, his right to make such a payment ceases to exist if a court has declared in an administration suit that the debt is statute-barred.

Both the Wright Committee and the New South Wales Commission did not consider this situation of importance since the right of the executor to pay in this manner could nearly always be defeated by an application to court. The latter body stated it would therefore be better to extinguish the right to save the possible expense of court applications.

This Commission agrees. Furthermore, it can see no good reason why a statute-barred creditor should benefit at the expense of the beneficiaries under the will. (See *In Re Yates* (1902), 4 O.L.R. 580, referred to supra, at p. 28.)

4. A trustee may pay statute-barred costs, and apparently statute-barred debts.

Both the Wright Committee and the New South Wales Commission said this did not often happen in practice.

As in situation 3, this Commission sees no good reason why a statute-barred creditor should benefit at the expense of the beneficiaries. (See *Re Alice Kerr* (1911), 2 O.W.N. 1342, referred to supra, at p. 28.)

5. Certain liens and charges may be enforced although the debt which they secure may be statute-barred. These would include a solicitor's lien, and possessory liens. It would also include an equitable charge on shares, which can be enforced by foreclosure or sale.

The Wright Committee, and it appears the New South Wales Commission, thought this to be the most significant situation in which the continuance of the right played a part. Both bodies recommended provisions limiting the time in which actions to enforce liens and charges could be brought.

However, the case of a creditor who has in his possession a security which he can realize without action would not be affected by these provisions.

The Wright Committee did not think that the right to enforce such a security should be limited. Its report stated:

A creditor naturally refrains from bringing an action so long as he holds an ample collateral security, and it would be inconvenient to both parties if he were compelled to enforce the

security or lose his right altogether. We certainly do not desire to bring this about.

The New South Wales Commission agreed insofar as possessory liens were concerned but disagreed insofar as the right of mortgagees of personal property had powers to realize on their security without action. In respect of the latter, the New South Wales Report states:

But we think that the creditor has sufficient freedom of action if he has twelve years in which to exercise his powers after the last payment of principal or interest and the debtor can always relieve the creditor of any compulsion which he might otherwise feel: the debtor may give an acknowledgment.

(The twelve-year period mentioned is the same as that recommended for the recovery of money charged on personal property. In Ontario, the recommended period is ten years.)

In the case of possessory liens, however, the New South Wales Commission recommended special treatment. Its Report states:

We would save a debt secured by possessory lien on goods from extinction for as long as the owner of the goods has a cause of action for the conversion or detention of the goods or to recover the proceeds of sale of the goods, but only so far as is necessary to support and give effect to the lien.

This Commission does not agree that possessory liens should be so treated. It considers that they should be governed in the same way as the rights of mortgagees of personal property to realize on their securities without action. The New South Wales Commission's reasoning in respect to the latter applies to possessory liens, insofar as creditors have a power of sale. Such a power has been conferred on him by statute in nearly all cases. (See, for example, s. 3 of *The Innkeepers Act*, R.S.O. 1960, c. 189; s. 48 of *The Mechanics' Lien Act*, R.S.O. 1960, c. 233; and s. 4 of *The Warehousemen's Lien Act*, R.S.O. 1960, c. 423.) However, there is no power of sale in the case of a solicitor's lien for obvious reasons. The solicitor's lien would, however, be good for ten years from the date when the debt became due or from the last payment on account of the debt or from the last acknowledgment, as in the case of other charges on property. If the ten-year period is about to lapse, the solicitor will have to sue and obtain a judgment to protect his position.

Thus, this Commission does not consider that extinguishment of right poses a problem with respect to possessory liens or other charges on personal property, which requires special treatment. It believes all charges on property should be subject to enforcement within a ten-year period. This subject was dealt with in Chapter IV.

6. When personal property is converted, the right (title) to that property still exists in the owner, although his action is statute-

barred. Consequently, if a fresh conversion takes place by a second person, the statute runs anew (against the second person).

The Wright Committee thought this was the only case where a clear argument in favour of the extinction of title could be made. The Committee felt that an action to recover personal property was analogous to an action to recover land. However, they made no recommendation on the point as "it is quite obvious that the necessity for clearing the title is of far less importance in the case of chattels than in the case of land".

Nevertheless, the 1939 Act did contain a provision (s. 3) which does extinguish title in cases of conversion after time has run. The New South Wales Report recommends a similar provision.

Dean Falconbridge recommended the English provision to the Conference on Uniformity which introduced it into the Uniform Act in 1944. (See s. 45.) It has been the law of a number of provinces for some time.

This Commission believes that this is the most important instance in which extinguishment of right would operate. It puts title to tangible personal property on the same basis as title to real property. Thus, needed protection would be given to persons acquiring converted goods in the same way as it is now given to purchasers of land under section 15 of the Ontario statute.

7. Apparently a statute-barred creditor may present a bankruptcy petition, and although the debtor may plead the statute, no other creditor can object. As against any creditor, other than the creditor who presented the petition, the trustee in bankruptcy is bound to plead the statute.

It may be that such a creditor would not be entitled to petition under the *Canadian Bankruptcy Act*, (R.S.C. 1952, c. 14) but the statute is not clear on the point. (But see Duncan and Reilly, *Bankruptcy in Canada*, at p. 541.)

Of this situation, the Wright Committee said that, if it is good law, it is of slight importance. The New South Wales Commission agreed, stating:

. . . so far as bankruptcy questions are open to control by the law of New South Wales, we see no harm in the extinguishment of the right to a statute-barred debt.

This Commission is in agreement with that statement, which has particular relevance in view of this province's constitutional position in bankruptcy matters. Furthermore, this Commission can see no merit in allowing a statute-barred creditor to benefit at the expense of other creditors who have valid claims, merely because he happens to present the petition.

8. A debt incurred as the result of a tort (for example, hospital expenses in a negligence action) may be claimed as part of the damages flowing from that tort notwithstanding that the debt has become statute-barred.

Such a case is unlikely to occur under either the existing or proposed legislation. Personal injury actions are generally under the former and would be under the latter subject to shorter limitation periods than contract actions. However, it is conceivable under the proposed legislation, that a debt incurred in respect of an injury of which the debtor was not aware could become statute-barred before the tort claim. This would result from the extension of time which would be permitted in such a case in respect of the tort claim.

The New South Wales Commission were not prepared to find the unlikely possibility of such a case arising a reason for saving statute-barred debts from extinction.

This Commission agrees. It considers that there is little to be said in favour of allowing such statute-barred claims to be made in tort actions. There is no reason why the debtor should be reimbursed for a debt which his creditor can no longer collect.

9. Where a claim is one to which foreign substantive law applies, the local limitation law is applied as it is regarded as procedural on the ground that it bars the remedy and does not extinguish the right. On the other hand, if the statute of limitation of the particular foreign jurisdiction extinguishes the right it will become applicable as part of the substantive law of that jurisdiction.

This position in the conflict of laws has been much criticized and is dealt with in Part B of this Chapter.

The Wright Committee pointed out that the distinction between barring the remedy and extinguishing the right was of great importance in private international law but declined a suggestion that it should consider the matter in its Report.

The New South Wales Commission, however, strongly believed that extinguishment of right would greatly improve the law in this area. It would result in the New South Wales limitations law being classified as substantive by foreign courts. It would thus become applicable in foreign courts in cases in which the substantive law of New South Wales was applicable. "This", the New South Wales Report states, "is a consequence which appears to us to be natural and proper and we do not find anything in it which goes against our proposal that rights and titles should in general be extinguished when the causes of action for their enforcement are statute-barred".

This Commission agrees. As mentioned above, the question of classification of limitations statutes in conflicts will be dealt with later in this Chapter.

10. The rule of equity that a debt owed to a testator by a person who becomes executor of his will should be treated as an asset of the estate has been applied to a statute-barred debt.

The New South Wales Commission pointed out that this consequence of probating a will would normally be outside the contemplation of both the executor and the person named as executor. It found that the continued existence of the debt in such a case has "more mischief than utility".

This Commission agrees. The testator could have sued for the debt in his lifetime before the debt became statute-barred. He chose not to. His appointment of the debtor as executor should not result in the debt suddenly becoming collectible. In any event, such cases would incur most infrequently.

After reviewing the ten situations referred to above, the New South Wales Commission concluded:

We think it a useful reform to extinguish the right when the cause of action for its enforcement is barred and thus abolish a number of complicated rules of law which have little practical importance but stand merely as an occasional embarrassment to the student, the lawyer and the citizen.

This Commission wholeheartedly agrees with this statement. Accordingly, it recommends that there should be an extinguishment of right in all causes of action once the time for bringing action has lapsed.

The Scottish Law Commission, it should be noted, apparently is also in agreement with this view. In its recent memorandum setting out tentative proposals for prescription and limitation reform in Scotland, the extinguishment of right principle was used as a basis. The memorandum states (at p. 42) that, while no concluded view had been reached:

A contributory factor in our deciding to formulate our proposals based on the extinctive alternative is the fact that the Law Reform Commission of New South Wales . . . decided in favour

(NOTE: The extinction of title provision will have to be co-ordinated with the extension of time procedure recommended earlier for those personal injury and property damage situations where the potential plaintiff is not aware of his cause of action. It would be possible to apply for an extension of time after the two-year period has passed, i.e., after the right is extinguished. If the application for extension is granted, the result will be to revive the right. Neither the New South Wales Commission nor this Commission believe that this should cause difficulty. For clarification, however, the proposed statute should provide that, in such cases, the prior expiration of the limitation period should have no effect. Section 61 of the draft New South Wales bill so provides.)

(NOTE: The adoption of the extinction of right recommendation could result in a defendant relying on a defence by which he simply denies the right and title of the plaintiff, rather than explicitly pleading the Statute as he is now required to do by the Rules of Practice. It may be that consideration would have to be given to whether or not any change in the Rules would be desirable.)

The Commission's recommendation is:

There should be an extinguishment of right in all causes of action where the time for bringing action has lapsed.

B. CONFLICT OF LAWS

There are two situations of concern in which courts are faced with the problem of applying the Ontario statute of limitations or that of another jurisdiction:

- (a) Where a cause of action arises out of Ontario law and the action is brought in the jurisdiction other than Ontario, and
- (b) Where a cause of action arises out of the law of some jurisdiction other than Ontario but the action is brought in the Ontario courts.

The courts will make their choice according to the rules of private international law. As was mentioned in Part A of this Chapter, common law systems classify statutes of limitation as procedural if the remedy is barred and as substantive if the right is extinguished. The courts of the jurisdiction where the action is brought (the *lex fori*) will apply the procedural law of that jurisdiction to the action: if the statute of limitations of that jurisdiction is classified as procedural law, then that statute may be successfully pleaded by the defendant. On the other hand, if the limitations statute of the jurisdiction out of whose laws the cause of action arose had the effect of extinguishing the right, it too could be relied on by the defendant: he could successfully maintain that it was part of the substantive law applicable and that the right on which the cause of action was founded no longer existed.

Four examples of the conflict rules in operation are:

1. An action is brought in the Ontario courts for damages for personal injuries occurring from a motor vehicle accident in Quebec. Although the cause of action arose in Quebec, the limitation provision in Ontario's *Highway Traffic Act* is applicable and not the Quebec limitation laws. (See *Allard v. Charbonneau*, [1953] O.W.N. 381.) Here, it is simply a question of applying the procedural law of the forum.
2. An action is brought in the Ontario courts for damages for the conversion of personal property in England. In this case, the

English limitations statute of 1939 will be relevant as section 3 of that enactment provides for the extinguishment of the owner's title.

3. An action is brought in the State of New York on a contract made in Ontario to which the New York courts would apply Ontario substantive law. The action must be brought within the period laid down by the New York limitation laws: the Ontario statute is irrelevant. As in the first example, it is the procedural law of the forum that matters.
4. In proceedings in Manitoba where the ownership of land in Ontario comes into question, the Ontario limitation laws would apply as section 15 of the Ontario statute extinguishes title. Proceedings of this kind can only occur in a few situations, however, as the general (common law) rule is that a court has no jurisdiction to adjudicate upon the title to, or right to possession of, land located in another jurisdiction. (See Cheshire, *Private International Law*, 7th ed., p. 503 *et seq.*)

These conflicts rules have been severely criticized by the leading authorities. (See, for example: J. D. Falconbridge, *Essays on the Conflict of Laws*, 2nd ed., Chapter 12; G. C. Cheshire, *Private International Law*, 7th ed., pp. 585-588.) There are three main difficulties:

1. It has already been noted that the distinction between barring the remedy and extinguishing the right is both unreal and, to some, theoretically unsound. For practical purposes, the barring of the remedy effectively renders claims worthless except in a few unusual cases. Jurisprudentially, the separation of remedy from right has been attacked. Statutes of limitation should all be regarded as substantive law, regardless of whether the remedy is barred or the right extinguished.
2. The governing limitations laws should be of those of the jurisdiction to which the courts look for the appropriate substantive law. If an action arising out of a motor vehicle accident in Ontario is brought in Quebec because, for example, the defendant resides there, the party suing should have to start his action within the time required in Ontario. Now he may sue in Quebec, even if it is too late for him to sue in Ontario. That is not right.
3. It is not always a simple matter for the courts of one jurisdiction to determine whether the limitations law of another jurisdiction is substantive or procedural. For example, if an Ontario court had to examine the limitations law of Germany, Egypt or China, it might well find different concepts and language make classification difficult.

Various reforms in the conflicts rules have been suggested. (See, for example, Falconbridge and Cheshire, referred to above.)

This Commission has, however, already recommended that there should be a general extinguishment of right once time has run. The acceptance of that principle would in itself lead to improvements in the conflict of laws field. If the recommendations were implemented, courts, both in and outside of Ontario, would presumably classify the new Ontario statute as substantive and not procedural law, at least for the purposes of conflict of laws. This is the desirable result and, in order to ensure that it will be achieved, the Commission recommends that the proposed statute contain a provision stating that it be classified as substantive law for conflict of laws purposes. It should then follow that the courts of other jurisdictions would apply the Ontario limitation statute to causes of action arising out of Ontario law but being enforced in their courts.

This leaves the problem of how to treat causes of action arising in other jurisdictions but which are the subject of suit in the Ontario courts. Since the proposed Ontario statute would now be regarded as substantive rather than procedural law, it would probably not apply to such actions at all, unless, of course, the statute was made expressly applicable. First, it would not apply to "foreign" causes of action as part of the procedural law of Ontario for the simple reason that it would be classified as substantive law. Second, while containing a provision for general extinguishment of right, it must be doubtful if such a provision should be applied to rights arising out of the law of other jurisdictions. If it were to be applied, it could only extinguish the right so far as Ontario is concerned.

The New South Wales Commission, which recommended a general extinguishment of right provision, recognized that such a provision would result in the courts of other jurisdictions applying the New South Wales limitations statute when dealing with a matter to which the New South Wales substantive law was applicable. This result was considered "natural and proper". However, that Commission went on to state that the statute it was recommending would also govern actions brought in New South Wales for the enforcement of rights arising under the laws of other countries. Its Report does not explain how this would be the case if the statute is no longer procedural. The New South Wales Commission is trying to have it both ways. Its proposed statute is to apply in "foreign" courts to actions arising under New South Wales law and in the New South Wales courts to actions arising under the law of "foreign" jurisdictions. The New South Wales Commission have appeared to overlook the role that mutuality should play in private international law.

This Commission believes that the limitations laws generally should be classified as substantive law. Whether a cause of action arises under the laws of Ontario or some other jurisdiction, the appropriate limitation law is that of the jurisdiction under the laws of which the cause of action arises. Ontario courts in dealing with "foreign" causes of actions should apply the "foreign" statute of limitations. Where an action is brought in Ontario for damages arising out of a motor vehicle accident in Quebec, the Quebec limitations law should govern. Where an action is brought

in the Ontario courts on a contract to which the substantive law of New York applies, then it is the New York limitations laws that should be looked to.

Accordingly, this Commission recommends that:

The proposed statute contain a provision that Ontario limitations law and the analogous law of any other province, or of any state or country, shall be classified as a substantive law for the purposes of private international law (conflict of laws), whether or not the particular law bars the remedy or extinguishes the right.

C. FEDERAL CAUSES OF ACTION

The extent to which a province can constitutionally enact limitations laws which will apply to federal causes of action which may be the subject of proceedings in that province's courts has not been settled. (See Laskin, *Canadian Constitutional Law*, 3rd ed., pp. 835-837; R. H. Barrigar, *Time Limitations on Dominion Statutory Causes of Action*, (1964), 40 Can. Patent Reporter at p. 82.) Examples of federal causes of action which are subject to either federal or provincial limitations provisions were given in Part D of Chapter II of this Report.

If limitation laws can be regarded as having been classified as procedural law for constitutional purposes, then it would appear that there is concurrent jurisdiction with respect to civil federal causes of action litigated in provincial courts.

Under section 92 (14) of the *British North America Act, 1867* the provinces have exclusive legislative authority over procedure in civil matters in the provincial courts. However, it appears that the Parliament of Canada may, in respect of section 91 matters, prescribe the rules of procedure to be applied to federal causes of action whether pursued in the federal or provincial courts. If no federal rules of procedure are provided for such actions the litigant in the provincial court will be bound by whatever provincial rules exist. If, on the other hand, there are federal rules and these conflict with provincial rules, the litigant will be bound by the former.

Should, however, a provincial limitation statute be classified as substantive law for constitutional purposes, it could not have any applicability to federal causes of action. This would presumably be the case if the statute extinguished the right as well as barring the remedy, as this Report recommends. (It does not necessarily follow, of course, that classification for conflict of law purposes will be the same for constitutional purposes.)

Whether the proposed limitation statute is regarded as procedural or substantive law, the Commission does not believe that the province should be concerned with imposing time limits on the bringing of actions arising out of federal law. That is a matter which should be the concern of the federal authorities. It may well be that a federal statute of limitations is desirable, but that is not for this Commission to recommend.

It will be recalled that the Commission recommended a "catch-all" provision. It would subject "all other causes of action" to a six-year period. If the statute were regarded as procedural, it may be that the provincial courts would apply that provision to federal causes of action in instances where federal law had not specified a limitation period. The Commission sees no serious objection to such an application of the "catch-all" provision, as, for practical purposes, some limitation period is better than none in most situations. However, it is not the intention of the Commission that the proposed statute be designed to encompass federal causes of action. Furthermore, if the Commission's recommendation on extinguishment is adopted, the statute should be regarded as substantive and would therefore be confined to causes of action arising under Ontario law.

It might be argued that such a "catch-all" provision was *ultra vires* as "all other causes of action" would embrace federal causes of action over which the province had no legislative jurisdiction. (This point was raised in *Burton v. Burton*, [1946] 1 D.L.R. 315, where the "catch-all" provision in the Alberta statute was raised as a defence in an action for a declaration of nullity on the grounds of impotence. It was not necessary for the court to rule on the point as the case was decided on other grounds.) The Commission sees no real difficulty. The courts in examining the constitutionality of a statute will presume its validity, i.e., the court will presume that the legislature did not intend to go beyond its constitutional power. Thus, the courts would undoubtedly treat "all other causes of action" as "all other causes of action over which the legislature has jurisdiction".

D. THE CROWN

1. General

The Limitations Act does not bind the Crown, except as to those proceedings relating to land referred to in section 3, and penalties in clauses (l) and (m) of section 45 (1). (Section 11 of *The Interpretation Act* provides that no statute shall affect the Crown unless it contains an express provision to that effect.) Nor it seems is the Crown entitled to the benefit of the statute. (See Halsbury's Laws of England, 2nd ed., vol. 20, p. 601.)

Thus, an action by the Crown for breach of contract or for negligence, as examples, may be brought at any time. This is patently unfair to defendants. The Commission believes that this privileged position of the Crown should be brought to an end. On the other hand, the Crown should be clearly entitled to plead the statute.

Both the Uniform Act (s. 2 (a)) and the 1939 English Act (s. 30) have general application to proceedings by and against the Crown. The New South Wales Report recommends a similar provision (para. 59).

This Commission recommends that the proposed enactment apply to proceedings by and against the Crown in the same way as it applies with respect to ordinary persons.

2. *Land Actions*

The above recommendation extends to those proceedings by the Crown to which section 3 of *The Limitations Act* applies. Section 3 states:

3. (1) No entry, distress, or action shall be made or brought on behalf of Her Majesty against any person for the recovery of or respecting any land or rent, or of land or for or concerning any revenues, rents, issues or profits, but within sixty years next after the right to make such entry or distress or to bring such action has first accrued to Her Majesty.
- (2) Subsections 1 to 3, 5 to 7 and 9 to 12 of section 5 and sections 6, 8 to 11 and 13 to 15 apply to rights of entry, distress or action asserted by or on behalf of Her Majesty.

The provisions of the present statute relating to the acquisition of title to land by adverse possession, including section 3, do not, however, apply to:

- (i) waste or vacant land of the Crown, whether surveyed or not, and
- (ii) lands included in any road allowance surveyed and laid out, or lands reserved, set apart or laid out as a public highway, where the freehold in any such road allowance or highway is vested in the Crown, or a municipal corporation, commission or other public body. (See s. 16.)

Under section 19 of *The Public Lands Act*, R.S.O. 1960, c. 324, the Minister of Lands and Forests may authorize the giving of a quit-claim deed to a person who has been in actual possession of public lands by himself or through his predecessors for more than sixty years. Such quit-claim deeds are not infrequently given, twenty-five having been granted in the past two years, and usually relate to land in rural areas. The Crown does not appear to rely on section 16 of *The Limitations Act* which exempts "waste or vacant" land of the Crown from the adverse possession principle. The meaning of "waste or vacant" in section 16 has not been determined. (But see *Regina v. McCormick* (1859), 18 U.C.Q.B. 131 and *Attorney General for New South Wales v. Love*, [1898] A.C. 679. Section 16 was first enacted in 1902.)

The Crown owns land for a variety of purposes. It is the repository of these natural resources of the province which are not in private hands. In particular, there are vast unused tracts of land in the northern part of the province which fall in this category. On the other hand, there are lands which are used by the Crown in much the same way as the ordinary person or business enterprise. Government office buildings or housing would be located on lands of this kind. In addition, there are Crown lands which are used or designated for some special purpose generally peculiar to government. These include park lands, "wilderness areas", and lands subject to a timber licence.

There may well be a case for treating the lands of the Crown in the same way as other lands where the Crown is using its lands as an ordinary person or business enterprise would. In other cases, however, Crown lands should be subject to a much longer limitation period than ten years. The Crown cannot be expected to keep all its lands under surveillance. Particularly difficult problems are posed where private lands abut Crown lands under a lake or river. Quite frequently, the private owner extends "his" land by filling in the Crown lands which were previously under water.

The Commission considers that, for the time being, it would be simpler to treat all Crown lands in a similar manner, but that the present sixty-year period is too long. It recommends a thirty-year period. The present exceptions contained in section 16 should also be retained. When the law with respect to adverse possession is examined in the Law of Property Project consideration should be given to the Crown's position.

The Uniform Act provides that actions to recover Crown lands should be governed by a ten-year period. However, the major provinces to which this applies are the Prairie Provinces which are governed by the Torrens system in which the adverse possession principle plays an insignificant part.

The English Act of 1939 reduced the period from sixty to thirty years (s. 4 (1)), pursuant to the recommendation of the Wright Report (para. 8). The New South Wales Report recommends that the English reform be followed (para. 9). The thirty-year period was chosen as that is the period for which a vendor in England must show good title. It was felt that hardship would result if claims by the Crown arising prior to the thirty-year period could be enforced. In Ontario, the period for which a vendor must show good title is forty years. (See Part III of *The Registry Act*, R.S.O. 1960, c. 136.) The period for allowing actions to recover Crown land should not be longer as it now is.

3. *The Crown in its other Aspects*

Section 30 of *The Interpretation Act* provides, in part:

30. In every Act, unless the context otherwise requires, . . .
 9 . . . "the Crown" means the Sovereign of the United Kingdom, Canada and Her other Realms and Territories, and Head of the Commonwealth.

Notwithstanding this provision, it may be that a reference to the Crown in a statute of a province can be no more than a reference to the Crown in right of that particular province. It has been asserted that the constitutional position is that, as a general rule, a provincial legislature cannot enact legislation so as to defeat the rights of the Crown in right of Canada. (See Laskin, *Canadian Constitutional Law*, 3rd ed., p. 554 *et seq.*) It may be that the same reasoning would apply to the Crown in right of another province.

However, there may be room for arguing that if the Crown in right of Canada, or in right of another province, seeks relief in the provincial courts it would be bound by provincial procedural law. From a limita-

tions point of view, this will depend on whether the particular limitations statutes are regarded as procedural for this purpose. If the extinguishment of right recommendation is adopted in Ontario, however, it is unlikely that the procedural argument could be relied on. Since the limitation law would then be substantive and have the effect, if applicable, of extinguishing the Crown's right, it might well be held not to apply to the Crown in right of Canada or some other province.

Nevertheless, it may be argued that if the Crown in right of Canada is relying for its cause of action on the substantive law of the province, it cannot be selective and must take the burdens as well as the benefits of that law.

The Commission believes that the Crown in all its capacities should be bound by the proposed statute to the extent that it is constitutionally possible.

The Commission agrees with the position taken in the New South Wales Report which is (para. 62):

It seems right that so far as other governments under the Crown have activities in New South Wales or are parties to proceedings in courts in New South Wales, those governments should be in a similar position to that of the Government of New South Wales in relation to the limitation of actions. Without some such definition as this, the presumption may be that a reference in a New South Wales Act to the Crown would mean the Crown in right of New South Wales alone.

The New South Wales Commission accordingly recommended that the "Crown" be defined as including:

... not only the Crown in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

The adoption of such a provision would achieve the desired result if it is constitutionally possible. If it should be held that the province cannot bind the Crown in all its capacities in this way, nothing will be lost.

The Commission therefore recommends that:

1. (a) *The proposed statute should apply to proceedings by and against the Crown in the same way as it applies with respect to ordinary persons, except with respect to actions to recover Crown lands.*
- (b) *Actions to recover Crown lands should be subject to a limitation period of thirty years, although the present exceptions contained in section 16 of The Limitations Act should be retained.*
2. *The proposed statute should apply not only to the Crown in right of Ontario but also, so far as the legislative power of the province permits, the Crown in all its other capacities.*

PREScriptive EASEMENTS AND PROFITS-À-PRENDRE

S U M M A R Y

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A. INTRODUCTION

This chapter deals with the question of whether the law relating to the acquisition of easements or *profits-à-prendre* by prescription (i.e., the running of time) should be improved upon or abolished. The desirability of requiring the registration of existing prescriptive rights is included in this topic.

The acquiring of rights by prescription, to be accurate, is not properly a matter of limitations of actions, although in both subjects passage of time is the essential ingredient. With the former, the passing of time leads to the acquisition of a right, and with the latter, to the loss of the means by which a right can be enforced. In England, where the relevant statutory prescription provisions were first enacted, those provisions have been contained in a separate statute and the subject of prescriptive rights has traditionally been treated as one distinct from limitations. In Ontario, however, the relevant prescription provisions have been contained in statutes which also dealt with limitations of actions since as long ago as 1859 (see C.S.U.C. 1859, c. 88). They are in the present limitations act as sections 30 to 32, 34, 39 and 40. Owing to the presence of these provisions in the current enactment and to certain parallels which can be drawn between prescriptive rights and actions to recover land, the Commission considers it appropriate to examine those provisions in this Report.

The acquisition of easements and *profits-à-prendre* by prescription is based on the principle that long established enjoyment in some way of another's land should not be disturbed. (The same principle also provides the basis for the acquiring of title to land by adverse possession.) Unless there is some explanation to the contrary, it is assumed that the person who has been benefitting has the right to do so. Legal recognition is thus given to certain *de facto* situations.

In Ontario, these prescriptive rights may be acquired under what is called the doctrine of the lost modern grant and also under sections 30 and 31 of *The Limitations Act*. These means of establishing prescriptive rights are based on the law of England, which in this respect has been recognized by the English themselves as being archaic, if not unjustified and obsolete.

Practically speaking, these prescriptive rights are only acquired in this Province in lands which are governed by *The Registry Act* (R.S.O. 1960, c. 348). Lands within the Land Titles system can only be subject to prescriptive rights if those rights were in existence when the lands were first brought into that system or if those rights were recognized in a judge's plan under section 154 of *The Land Titles Act* (R.S.O. 1960, c. 204). It would only be in very rare circumstances that a judge would need to consider taking a prescriptive easement or *profit-à-prendre* into account in the preparation of a section 154 plan. In practice, then, once land is under the Land Titles system no further prescriptive rights are likely to arise. (See ss. 51 (1) 2, 57 and 154 of *The Land Titles Act*.)

B. EASEMENTS

(a) *Generally*

An easement is a right annexed to land to either:

- (1) use other land under different ownership in certain ways, or
- (2) prevent the use of such other land in certain ways.

Easements falling under the first head are said to be positive since their owners are entitled to commit some act on the land subject to the easement. Examples of positive easements include rights of way, the right to have an eave of a building project over the land of another, and the right to pollute a river with respect to a downstream owner.

The right to enter on another's land and take some "profit" from the soil, such as timber or minerals, is not an easement but may be a *profit-à-prendre*. (*Profits-à-prendre* are dealt with subsequently.) Nor is a public right of way an easement. A public right is exercisable by anyone whereas an easement is a right exercisable only by the owner of the land to which it is annexed. The land over which a public right of way exists is usually vested in the Crown or a municipal corporation.

Easements should also be differentiated from licences. A licence is permission given by the occupier of land which allows a person to

do something which would otherwise amount to a trespass. A dinner guest in one's home or a ticket-holder at a football game are licensees. Licences generally do not amount to interests in land, nor are they usually for the benefit of other land.

Where an owner of land agrees not to use his land in a particular way so that other land will benefit, he may have created a negative easement. In this case, the owner of the land subject to the easement must refrain from doing some particular act. For example, he may have agreed not to build on his land in such a way as to obstruct the flow of light through the windows of a building on the land adjacent. Another illustration is the easement of support, whereby the owner of land or buildings has agreed not to deal with his property so as to deprive his neighbour's building of support.

Negative easements are similar to restrictive covenants and, indeed, in some instances, such as the right to light, the right may be acquired in either fashion. However, certain restrictive covenants, such as a covenant not to carry on a business, cannot be established as easements. Restrictive covenants are equitable interests in land while easements are usually legal interests. This distinction is of little significance in this Province as registration under either *The Registry Act* or *The Land Titles Act* will constitute notice of the interest so that it will bind a subsequent purchaser. If there were no registration systems in Ontario, a *bona fide* purchaser for value of a legal estate, who bought without notice of a legal easement and an equitable restrictive covenant, would be bound by the easement and not by the restrictive covenant.

An easement is an interest in land and, as was mentioned above, is a right annexed to land. The land to which the right is annexed is called the dominant tenement. It is the land that benefits from the easement. There must be land benefitted for an easement to exist. The land which is subject to the burden of the easement is referred to as the servient tenement.

Whether a right amounts to an easement or not is of some significance. Since an easement is an interest in land, it is more than a personal right. Its annexation to the land means that a subsequent purchaser of the dominant tenement will be entitled to the benefit of it and a subsequent purchaser of the servient tenement buys subject to the burden, even though there is no contractual nexus between them. The benefit and burden of easements are thus said to "run" with the land.

Easements are regarded as always being created by a grant. The grant, however, may be express, implied or presumed.

An easement under a presumed grant is one which is established under the doctrine of prescription. The law will presume a grant of an easement where there has been long undisturbed enjoyment by the person claiming the easement. It is with easements and *profits-à-prendre* created in this way that this chapter is concerned.

(b) *Prescriptive Easements*

For a prescriptive easement to arise, the claimant must show user "as of right". This means that he has enjoyed the easement as if he were entitled to it. The enjoyment must have been without force, without secrecy and without permission. (*Nec vi, nec clam, nec precario*, are the expressions used in legal terminology.) A claimant to a right of way will not succeed if he had to break open a locked gate to achieve his use or where the adverse use has been continually contentious. Nor will he be successful if the adverse use is secret, although active concealment is not an essential ingredient of secrecy for this purpose. This may be illustrated by the underground discharge of waste from one property into another. Finally, if permission has been given by the owner of the land, a prescriptive easement cannot arise. It matters not how long ago that permission was given, or whether it was written or oral. Obviously, if an owner of land gives permission (i.e., a licence) to another to cross his land, the owner should not be subjected to a claim for an easement merely because the person to whom he has given permission has taken advantage of that permission for a considerable length of time.

The person claiming the easement must show that the owner of the land has acquiesced in his enjoyment. The latter must have acquiesced, yet not given permission. It is not always easy to tell whether or not there was, in fact, acquiescence or permission in a particular case.

Under English law, prescriptive easements can arise in three ways:

- (i) at common law;
- (ii) under the doctrine of the lost modern grant;
- (iii) under the *Prescription Act*, 1832.

In Ontario, prescriptive easements can only be created by the second and third methods. The English statute was adopted for Upper Canada in 1847 and most of its provisions are now to be found in *The Limitations Act*.

The Limitations Act expressly excludes the operation of prescription in certain situations. It has not been possible to acquire a prescriptive easement with respect to light in Ontario since 1880. (See s. 33.) However, prescriptive easements of light which were acquired prior to 1880 are still valid to-day. Wires or cables on another's property cannot give rise to a prescriptive easement. (See s. 35.) Nor can prescription under *The Limitations Act* work against unsurveyed Crown lands. (See s. 41.) It does, however, apply to surveyed Crown lands. (See ss. 30 and 31.)

(i) *At Common Law*

At common law, a grant of an easement would be presumed if the enjoyment of the claimed right could be shown to have continued from

time immemorial. Under the common law in England, this meant back to 1189, the first year of the reign of Richard I. Since it would be virtually impossible to show continuous enjoyment since 1189, the courts would presume that such long-term enjoyment existed if twenty years of user could be proved. However, the presumption could be rebutted by showing that at some time since 1189 the adverse use did not exist.

In Ontario, common law prescription cannot arise as "legal memory" does not go back to 1189. The Ontario courts have taken judicial notice of the fact that America was discovered in 1492. (See *Abell v. Village of Woodbridge* (1917), 39 O.L.R. 382 at p. 388.)

(ii) *The Lost Modern Grant*

To overcome the obvious difficulties in establishing a prescriptive easement at common law so that legal support could be given to long established enjoyment, the English courts developed what Cheshire has described as "the very questionable theory" of the lost modern grant. This judge-made rule was based on the court's presuming that, if actual enjoyment had been shown for a reasonable length of time, an actual grant had been made when the enjoyment began, but that the deed granting that easement had been subsequently lost. The speciousness of the fiction of the "lost" grant is demonstrated by the refusal of the courts (although there is some law to the contrary) to allow the presumption to be rebutted by evidence that no such grant was in fact made.

Generally, twenty years' use is sufficient to raise the presumption. However, a longer or shorter period may suffice, each case having to be decided on its own merits with regard to all other relevant evidence (besides the adverse use).

The doctrine of the lost modern grant is part of the common law as it exists in Ontario.

(iii) *The Prescription Act of 1832*

The relevant provisions of this statute were made applicable to Upper Canada in 1847 and are now contained in sections 30 to 32, 34, 39 and 40 of *The Limitations Act*.

The purpose of the 1832 statute was to reduce the uncertainties of establishing prescriptive easements at common law or under the lost modern grant doctrine, and avoid the problem of persuading juries to find that grants had been made and lost when it was obvious that this was not the case.

The statute did not replace the common law and lost modern grant methods of acquiring prescriptive rights. It merely supplied a new and supposedly simpler method. Thus, in England, a prescriptive easement can still be claimed in three different ways and, in Ontario, in two. Because of the requirements of the provisions of the statute, there are

occasions when a prescriptive easement cannot be successfully claimed under it but, nevertheless, can be either at common law or under the doctrine of the lost modern grant in England and under the latter in Ontario.

The Act of 1832 is described by Megarry and Wade in their text on real property law as "ill-drafted" and Gale, the author of the leading treatise on easements, wrote "it certainly is to be lamented that its provisions were not more carefully framed". These comments apply to the provisions as they have been carried forward into the present Ontario limitations statute. The prescription provisions of that enactment remain a mystery to many a practising lawyer.

Under these provisions, the following are the points of significance:

1. Section 31 establishes two different periods for the creation of prescriptive easements. These periods are twenty and forty years.

The 20 year period

After twenty years of adverse use, an easement cannot be defeated by showing that user began after 1189. This merely facilitates the operation of prescription at common law by eliminating one kind of defence. Thus, while an easement by prescription at common law could not be created in Ontario apart from this provision, section 31 makes "time immemorial" irrelevant and enables a prescriptive easement to be created at common law in this province. Apart from showing user began after 1189, a claim for a prescriptive easement after twenty years' adverse use may still be defeated by any other defence that was available at common law.

The 40 year period

After forty years of adverse use, the easement becomes "absolute and indefeasible". This is not as definite as it appears. The basic rule that prescription must operate for and against a fee simple estate still applies. Thus, a tenant cannot prescribe against his landlord and it is doubtful if a corporation can be prescribed against if it does not have the power to grant an easement. Also a claim based on forty years' adverse use may be defeated, as could a twenty year claim, by showing that the user was forcible or secret, or enjoyed by written permission. On the other hand, a forty year claim cannot be defeated, as a twenty year claim can, by proving it was enjoyed by oral permission. Furthermore, the disabilities that have to be taken into account in the running of the twenty year period under section 39 do not apply to the running of the forty year period. (Note, however, section 40.)

Thus, section 31 may be said to operate both negatively and positively. It facilitates the creation of common law prescription by the elimination of a defence, on the one hand, and establishes a right, on the other.

2. Section 31 only comes into play when there is litigation and the relevant period of user must immediately precede the bringing of the action. Thus, forty years of adverse use does not of itself create an "absolute" prescriptive easement. An action must be brought and the necessary period of enjoyment must be immediately prior to the commencement of that action.
3. The period must be "without interruption". This does not mean mere non-user by the person claiming the easement. It means that the claimant has not been obstructed from enjoying the use.
4. No act is deemed to be an interruption for the purpose of section 31 unless the person claiming the easement has submitted to interruption for one year.

Example of the operation of sections 31 and 32

X has been crossing Y's property as if he had an easement for 19 years and one day. The next day Y prevents X from crossing by placing an obstruction in the way of passage. At this time, X has no right to cross as he cannot show twenty years of enjoyment.

However, if X sues for a prescriptive easement one year from the day after he had enjoyed the use for nineteen years, he will succeed. X will now be able to show twenty years of enjoyment prior to bringing the action. The interruption will not count as it was for one year less a day. X could not have brought his action sooner as he would have been short of the twenty year period required.

An action brought by X on the following day will be too late as the interruption will now have lasted a year and section 31 can no longer apply.

The acquisition of an easement by adverse use or enjoyment is, of course, to be distinguished from the acquisition of title by adverse possession under sections 4 and 15 of *The Limitations Act*. Ten years of adverse possession gives rise to a possessory or "squatter's" title, which is good against the world. The adverse use required for an easement does not amount to a dispossession and, of course, must be for the benefit of adjacent land. Adverse possession entails dispossession and does not depend for its existence on other land which will benefit.

Furthermore, the adverse enjoyment which gives rise to a prescriptive easement is based on a presumed grant. It is presumed that the claimant had been granted the right to use the lands in the first place. Adverse possession raises no such presumption but, once it has lasted ten years, results in:

- (a) the dispossessed person being barred from suing for the recovery of the land; and
- (b) the dispossessed person's title to the land being extinguished.

The law relating to prescription is both confusing and complex. Certainly, if prescription were to be retained, there should be substantial improvements. Confusion and difficulties under the present law arise from:

1. having two different methods of prescription when one would be sufficient;
2. having two different periods under the statute when one would be sufficient;
3. tying the prescription periods under the statute to the commencement of an action;
4. requiring long periods of adverse enjoyment, considering that ten years' adverse possession is sufficient to create a possessory title;
5. excluding from the periods required under the statute time when the servient tenement is owned by someone under a disability, when such persons usually have legal representatives who can act on their behalf;
6. the poor drafting of the statutory provisions;
7. the use of the fiction of the "presumed" grant;
8. the obscurity of the law as to the meaning of "user as of right"; and
9. the difficulty or undesirability, in some cases, of having to make "interruptions" in the running of time by the creation of physical obstructions.

C. PROFITS-À-PRENDRE

(a) Generally

A *profit-à-prendre* is a right to enter the land of another person and to take some profit of the soil, or a portion of the soil itself. It may consist of a right to take crops, timber, minerals, or fish or game. The right to take water cannot be a *profit-à-prendre* as water is not considered part of the soil or capable of being owned.

Minerals, however, may be sold so as to be owned separately from the land in which they exist. Such separate ownership of the minerals is not a *profit-à-prendre*. Under a *profit-à-prendre*, ownership in the mineral does not pass until it has been extracted. Oil and gas "leases", for example, may come within either of these categories, depending upon how they are framed. (See *McColl-Frontenac Oil Co. Ltd. v. Hamilton*, [1953] S.C.R. 127; *Birkheiser v. Birkheiser*, [1957] S.C.R. 387.)

Like the easement, the *profit-à-prendre* may be for the benefit of other lands, and thus appurtenant to a dominant tenement. The land which is subject to the *profit-à-prendre* is, of course, the servient tenement. However, a *profit-à-prendre* may also exist in gross, which is not the case with respect to easements. Where the *profit-à-prendre* is in gross, it is independent of any dominant tenement and can be dealt with as a separate interest in land in any of the usual ways.

(b) *Prescriptive*

A *profit-à-prendre* may be claimed in Ontario by prescription, either by virtue of the doctrine of the lost modern grant or under section 30 of *The Limitations Act*. Section 30 provides for the establishing of a prescriptive *profit-à-prendre* after thirty years of adverse use by the claimant, although the claim may be defeated on certain grounds. After sixty years, the section provides that the right to the *profit-à-prendre* become absolute (unless it can be shown that the adverse use was enjoyed by written consent). Prescription under *The Limitations Act* is not, however, applicable to unsurveyed Crown lands. (See s. 41.)

Prescriptive *profits-à-prendre* in gross cannot be successfully claimed under the statute. They can, however, be established under the doctrine of the lost modern grant.

D. THE CASE FOR ABOLITION

In England, it has been recommended that the creation of easements and *profits-à-prendre* by prescription be abolished. This recommendation was contained in the Fourteenth Report of the Law Reform Committee, which was completed in September, 1966. The fourteen-man Committee, under the chairmanship of Lord Pearson, was unanimous in concluding that prescription should be abolished with respect to *profits-à-prendre* but was divided eight to six on the subject of prescriptive easements. The eight were for abolition, while six members were in favour of retaining prescription with regard to easements but on an improved basis.

Early in 1968, the Commercial Law Subsection of the Ontario Branch of the Canadian Bar Association recommended abolition after an examination of the problem. Their recommendations were subsequently approved by the executive of the Ontario Branch and forwarded to the Commission for its consideration. The Commission is grateful to the Ontario Branch for their views.

Counsel to the Commission solicited the views of some forty lawyers throughout the province, who were experienced with conveyancing, on the desirability of abolition. Only two indicated that they were in favour of retaining prescription. The general view clearly favoured the elimination of prescription for the future.

It may be as well to treat *profits-à-prendre* and easements separately, although all the reasons for abolishing the latter will apply to the former.

(a) Easements

The reasons for abolition of prescriptive easements have been well put by the majority on the Pearson Committee. They are set out below. The Pearson Committee's recommendations were, it should be noted, directed against the further creation of prescriptive rights. It was not the Committee's intention to interfere with existing prescriptive rights.

1. . . . there is little, if any, moral justification for the acquisition of easements by prescription, a process which either involves an intention to get something for nothing or, where there is no intention to acquire any right, is purely accidental. Moreover, the user which eventually develops into a full-blown legal right, enjoyable not only by the dominant owner himself but also by his successors in title forever, may well have originated in the servient owner's neighbourly wish to give a facility to some particular individual, or (perhaps even more commonly) to give a facility on the understanding, unfortunately unexpressed in words or at least unprovable, that it may be withdrawn if a major change of circumstances ever comes about.
2. There is no reason why a person who wishes to acquire an easement over someone else's land should not adopt the straightforward course of asking for it. The tendency of modern legislation over a wide field, albeit not universal, is to expect people's rights and liabilities to be defined in writing . . . and the same principle should apply to the means by which easements may be acquired. Moreover, if easements could be acquired only by written grant, many of the doubts about the precise nature and extent of the easement would, we hope, disappear. In the absence of a grant, there does seem to be considerable difficulty in finding a formula which will not do injustice to a servient owner by rendering him liable to have far more extensive rights imposed on him than he could be said to have recognized by acquiescence
3. There are also arguments in favour of abolition based as much on practical convenience as on any general theory. It will not be very long now—comparatively speaking, at least—before compulsory registration of title to land on sale will become universal throughout the country, and the aim here should be for the register to be, as far as possible, a true mirror of the title. No doubt this ideal can never be absolutely achieved, but easements arising from prescription certainly constitute one of the most troublesome of the "over-riding interests" which bind the land without being registered. (Public rights of way are much more likely to be visible on inspection of the land than are private rights of way or other easements.) So it is not simply a question of balancing the disappointment of someone who is deprived of what he may think is a long-established right against the chagrin of a man who finds that his good nature or carelessness has allowed his neighbour to steal a march on him. The interests of the general public come into the picture as well; and the advantage to the community of being

able to rely on the accuracy and completeness of the register ought to be allowed to tip the scales against the continuance of prescription.

[Land in England is only in the process of being covered by a land registration system. In Ontario, all patented land is governed by either *The Registry Act* or *The Land Titles Act*. Hence, the reasoning in paragraph 3 above applies with even greater force in this jurisdiction.]

4. Moreover, if a servient owner is to be liable to be saddled with easements created by prescription, then the law ought to provide him with some simple and cheap method of protecting himself against what may otherwise be imposed upon him by the passage of time. The only satisfactory way of doing this is by some system of registration and there are considerable doubts as to the feasibility of this Even if it is feasible, it seems doubtful whether those exceptional cases where prescription does meet a genuine need . . . would justify the elaborate administrative arrangements that a new system of registration would involve.

The majority did not believe that it was either necessary or appropriate for the same legal rules to apply to the acquisition of prescriptive easements as apply to the acquisition of title to land by adverse possession. Comparing the two processes, the majority stated:

Certainty of title to land is a social need and occupation of land which has long been unchallenged should not be disturbed. Moreover, a squatter's occupation of land is sufficiently notorious to invite preventive action. There is no comparable need to establish easements, and user even "as of right" may be insidious. The creation of easements, which may limit the use or development of the servient land, should not be encouraged. No serious hardship would result if in future, subject to appropriate transitional safeguards, no easements could be acquired by prescription.

(b) *Profits-à-Prendre*

No one has argued in favour of retention of the acquisition of *profits-à-prendre* by prescription.

In Ontario, *profits-à-prendre* are rarely, if ever, claimed by prescription. There appears to be no reported cases on the subject. This is probably due to three factors:

- (1) a person is not likely to engage in the open exploitation of another's lands without consent;
- (2) if he does so, the owner of the land would normally take steps to stop him;
- (3) the length of time that is required to establish the prescriptive right.

The Pearson Committee concluded unanimously that prescriptive *profits-à-prendre* be abolished. Its report states (at para. 98):

Broadly speaking, it can be said that it is less harsh and unfair to deprive a man of a profit which he has been enjoying, but to which he cannot adduce a documentary title, than is the case where an easement is concerned. The acquisition of a profit is normally of a more commercial character than is the acquisition of an easement and it is not unreasonable that the purchaser should be required to prove the bargain upon which he relies.

E. THE CASE FOR RETENTION AND IMPROVEMENT

The reasons for retention of prescription for easements given by the minority of the Pearson Committee are set out below:

1. Many of the unsatisfactory characteristics of the existing law in the field of prescription can be remedied by the simplifications and amendments discussed later in this report and do not call for the abolition of prescription.
2. There is no less moral justification for the acquisition of easements by prescription than there is for obtaining a title to land by adverse possession: to represent prescription as a process of "easement stealing" is to ignore the fact that it involves open enjoyment over a long period in the assertion of a right, and that it is a process designed to give legal recognition and validity to a state of affairs of long standing, in which successive servient owners may have acquiesced.
3. The dominant owner for the time being is not in most cases a person who wishes to acquire an easement, but a person who believes or assumes that he is entitled to an easement. This may well have played some part in inducing him either to buy the dominant land or to lay out money on it. Moreover, prescription is a process designed to apply not only to cases where there has in fact been no grant, but also to cases in which there may have been a grant which has been mislaid. The well-settled principle of English law that long-continued possession in assertion of a right should, if possible, be presumed to have had a legal origin (per Lord Herschell in *Phillips v. Halliday*, [1891] A.C. 228, at p. 231) remains as valid as ever. It would be widely accepted by the public as fair and right that a servient owner who has not for many years taken the trouble to protest against the open enjoyment over his property by a neighbour of a benefit of a kind capable of existing as an easement should be debarred from putting an end to such enjoyment.
4. In spite of the differences between adverse possession and prescription, the same fundamental considerations apply to them. Anyone who has for a sufficient period had undisputed and uninterrupted enjoyment of something capable of sub-

sisting as a property right, notwithstanding the actual or constructive knowledge of him who might otherwise claim to be the true owner, should be allowed to retain the subject matter (whether corporeal or incorporeal) as his own property and the other party should be barred from disputing his ownership. If it is accepted that a *status quo* of long standing ought to be given legal recognition, prescription has not outlived its usefulness. Conveyancers are frequently faced with the question whether a prescriptive title cannot be established: in other words, the *de facto* position often does not accord with the known documentary title.

5. It should not be assumed that the doctrine is only called in aid where there has in fact been no grant. An easement may well be granted by a deed which does not in any other way affect the title to either the servient or the dominant tenement: the servient owner may retain no counterpart and his successors may be ignorant of, or overlook, the existence of the grant. Unless and until the easement is disputed, the dominant owner and his successors may have no occasion to refer to the grant, and a long period may elapse during which the grant becomes lost.
6. Although there has been much registration of title to land, universal registration is still a long way off. The application of compulsory registration to the whole of England and Wales would not in any event mean that the title to all land would at once become registered. The question whether prescription should be abolished or preserved should not be decided on grounds primarily applicable to registered land.

The arguments of the minority are impressive. However, they do have somewhat less cogency in Ontario than in England. In the latter jurisdiction, land holdings have a much longer history, buildings are older and, owing to the more concentrated population, land use is more intensive. In addition, the role of registration has not been, nor will it be for some time, of the same significance as it is in this Province, where all patented lands are governed by one or other of the two registration systems. These differences would indicate that the need for prescription to solve long term adverse enjoyment situations is greater in England than Ontario.

The Pearson Committee as a whole agreed that, if prescription for easements were to be preserved, the method of acquisition should be substantially changed. (See paras. 41 to 81 of the Fourteenth Report.) The major changes proposed are set out below:

1. All existing methods of acquisition be abolished;
2. The new prescriptive period be the same as the period for acquiring title to land by adverse possession;

(In England, the period is twelve years; in Ontario, it is ten years.)

3. The period should be unrelated to the commencement of an action;
4. The following periods should no longer be excluded in computing the time that can be counted for prescription:
 - (a) periods of occupation of the servient tenement by an infant or person of unsound mind,
 - (b) periods of occupation of the servient tenement by a tenant for life or, in certain cases, for a term of years,
 - (c) periods during which an abated action was pending;
5. Prescription would no longer be based on the presumed grant, although the prescriptive easement claimed would have to be capable of being the subject matter of a grant;
6. A tenant should be able to prescribe against his own landlord and *vice versa*; and
7. Notional interruption should be made available to the owner of the lands subject to the adverse use.

(This notional interruption would take place by the giving of a notice of interruption to the occupier of the "dominant" land and by registration against that land in the local land charges register.)

F. RECOMMENDATIONS

(a) *General*

The Commission has concluded that it should no longer be possible apart from a transitional period, to create prescriptive easements and *profits-à-prendre* in Ontario.

There appears to be no valid reason for retaining prescription for *profits-à-prendre*.

Insofar as prescriptive easements are concerned, the Commission agrees with the majority of the Pearson Committee. In Ontario prescriptive easements occur relatively infrequently, although it would not be true to say they are rarities. To the extent that prescriptive easements do arise in Ontario, they generally occur in one of three situations. For various reasons, it appears that prescription would be less rather than more likely to arise in the future with respect to them. The three situations are:

1. *Overhanging projections*

This is where a builder, probably inadvertently, constructed a building with the base on his own lands but with a projection, such as an eave, intruding over the land of his neighbour. These are

less likely to occur owing to the increasing awareness of boundaries brought about by the higher legal description and survey standards in the land registration systems. In addition, modern planning requirements as to setback in the construction of new buildings in downtown areas will reduce the possibility of overhanging projections.

2. *Easements of support*

These may exist when a building has come to depend on an adjacent building for support. Planning requirements as to setback and building by-laws imposing higher construction standards will reduce this problem.

3. *Cottage Rights of Way*

Many cottage lots have been created in the past without provision being made for a proper right of way from the cottage to the highway. It is common for a cottage to be reached by a winding dirt road, of perhaps a half-mile or more in length, over some farmer's land. In the deed for the lot, either no mention of a right of way was made or the affected area was so insufficiently described that it could not be recorded adequately, or at all, on the abstract of the servient tenement. (Such inadequate descriptions are no longer permissible. See s. 33a of *The Registry Act*.) It was probably agreed informally between the original purchaser of the cottage lot and whoever then owned the farm that the dirt road would be used for access. The chief reason for not having had a proper survey of the road has been the expense involved.

Subsequent purchasers of the cottage lot may find that they have no right of access, unless they can base a claim on prescription. Even the original purchaser might find himself deprived of access, if the farmer sold the lands over which the road ran and the purchaser of those lands decided to close off the road, unless he can claim by prescription.

It will, of course, be a valid defence to a claim for a prescriptive easement in these cases if permission to use the road is proved (unless, of course, the permission was oral and the claim is based on forty years' adverse use). Consequently, a prescriptive right of way will only be created where, for some reason, there is no evidence of how the user began. Perhaps, the farmer has died and there is therefore no one to testify that permission had been given. In any event, the element of permission makes this kind of situation less fruitful, from a prescription point of view, than it would appear at first glance.

Furthermore, owing to more extensive planning requirements as to access in new subdivisions and an apparent increasing awareness of access problems by cottage purchasers, it would seem that there is less chance of prescriptive rights arising in this way in the future.

Undoubtedly, there will continue to be a small number of situations in which prescription could prove a useful solution. However, while there is much to be said for a procedure by which *de facto* situations are given legal recognition, the Commission believes that this advantage is outweighed by the advantage to the public which would result from abolition. The public should be able to rely on searches in the registry and land titles offices in order to find the state of title. The records in those offices should reflect, to the greatest extent possible, the title position.

Legislation has recently been enacted applying this principle to express easements. *The Registry Act* was amended in 1966 to ensure that the burden is properly entered on the abstract for the servient tenement. Section 33a was added to the Act to protect purchasers and mortgagees from the burden of express easements of which they had no actual notice. Such an easement can arise when a registered conveyance of a dominant tenement contains an express easement over other lands and, either through oversight or because of an inadequate description, no entry is made on the abstract for the servient lands. A purchaser of the servient lands is said to have notice in such circumstances since the deed creating the easement has been registered, even though it is only entered on the abstract for the dominant tenement and the purchaser of the servient tenement has no actual knowledge of it. Section 33a is a partial reversal of *Israel v. Leith* (1890), 20 O.R. 361, a case well known to Ontario conveyancers. (See also *Bickley v. Romanow*, [1965] 1 O.R. 61.)

Under the Land Titles system in Ontario it is not possible to acquire prescriptive easements or *profits-à-prendre*, with the insignificant exception of possible recognition on a judge's plan under section 154 of *The Land Titles Act*. From discussion with officials who administer that system, it appears that this prohibition has created little, if any, difficulties. They were not aware of any situation in which a prescriptive *profit-à-prendre* might have been claimed were it not for section 57. In a few instances, where there were problems concerning projecting eaves, the adjacent owners were able to reach agreements giving easements. On some of these occasions, prescription would have been of no assistance since insufficient time had lapsed.

Accordingly, the Commission recommends (except insofar as the transitional provision recommended later is concerned) that:

- (i) legislation be enacted declaring that the doctrine of the lost modern grant is no longer part of the law of Ontario; and
- (ii) sections 30 to 35 and 39 to 41 of *The Limitations Act* be repealed and not be replaced in any new limitations statute.

In the event that the Commission's recommendation of abolition is not implemented, the Commission would urge that the law of prescription be improved along the lines proposed by the Pearson Committee. Since our Commission was unanimous in its conclusion as to abolition, this Report does not set out in detail the alternative proposal.

With respect to overhanging projections, there should perhaps be a similar procedure for adjustment between adjoining owners as is provided by section 38 of *The Conveyancing and Law of Property Act* (R.S.O. 1960, c. 66) in cases where a person builds on another's property under a mistake of title. Section 38 does not, however, apply to situations where the mistake is one of identity rather than title. Overhanging projections would usually occur as a result of mistakes in identifying land. In any event, section 38 will be reviewed in the Commission's Law of Property Project. Then will be the appropriate time to consider whether it should extend to overhanging projections, or whether there should be a separate procedure for dealing with this problem. For the time being, the Commission makes no recommendation on this point.

(b) *Transitional Provisions*

In recommending the abolition of the creation of prescriptive easements and *profits-à-prendre*, the Commission does not intend that the position of persons who have the required periods of adverse use to establish prescriptive rights should be affected.

Under the doctrine of the lost modern grant, a person may have acquired a prescriptive easement whether or not an action has been brought to establish his rights. It is not intended that the recommended abolition of prescription affect this person's position, even if it is necessary for him to establish his rights by litigation subsequent to abolition.

So far as prescription under *The Limitations Act* is concerned, the repeal of the relevant provisions should not affect the position of the person who has the required period of adverse use but has not established his prescriptive right in an action as section 32 of that act requires. Thus, repeal of the relevant provisions of the statute should be subject to the position of any person who has the necessary period of adverse use, whether or not an action has been brought.

There is one further transitional problem. Should persons who have had adverse use for an insufficient time to establish a prescriptive right at the time of abolition, be entitled to additional time in order to establish their prescriptive rights?

Where a person has enjoyed adverse use for an insufficient time, it may be argued that he has no right at all or that he has an accrued or inchoate right. Since his prescriptive right is based on long term enjoyment, can it be said that he has any "rights" at all before he has the necessary period of enjoyment? On the other hand, it may be unfair to wipe out the position of the person who has a substantial but insufficient period of enjoyment.

The Pearson Committee felt that such a person had an accrued or inchoate right which should not be abrogated by abolition. That Committee recommended that, in order to effectuate as speedy a transition as possible, a twelve year transitional period be fixed after which it would not be possible to claim time for a prescriptive easement. During the transitional period:

1. no new prescriptive period would start to run;
2. any prescriptive period that had started to run prior to the transitional period could be defeated in any way possible under the existing law;
3. if the required period of enjoyment under the present law was reached, the person would immediately acquire his prescriptive right;
4. if the required period of enjoyment under the present law was not reached, the person would acquire a prescriptive right at the end of the transitional period providing adverse enjoyment had continued throughout that period.

Thus, a person who had eighteen years of adverse enjoyment at the time of abolition would acquire a prescriptive right two years after the transitional period began. On the other hand, a person with two years adverse enjoyment at abolition would acquire a prescriptive right at the end of the transitional period. In both instances, it is, of course, assumed that adverse enjoyment continued. In the second case, a prescriptive right has been created in fourteen years, six years less than is required at present. The Pearson Committee considered that the cutting down of the required period in what would be a limited number of cases would

... not be an unreasonable price to pay for advancing the elimination of prescription by eight years, while leaving servient owners ample time in which to protect themselves by taking appropriate steps to prevent time from running against them in favour of such dominant owners.

It would not be necessary to establish the right by action under the Pearson Committee's proposal.

This Commission agrees with the approach taken by the Pearson Committee in giving recognition to periods of enjoyment insufficient to create prescriptive rights. However, the twelve year transitional period recommended was undoubtedly chosen for the same reason as the minority selected it for their recommended prescription period. Twelve years is the time required in England to acquire title by adverse possession. In Ontario, the period is ten years.

The Commission recommends a ten year transitional period.

(c) *Necessity to Register*

One of the main reasons for abolishing the right to acquire easements and *profits-à-prendre* by prescription is to ensure that the land registration records reflect to the greatest extent possible the title position of any given parcel of land.

The recommended abolition would prevent the creation of these interests in the future (i.e., after the transitional period expires). Prescriptive rights in existence at time of abolition, however, would be preserved as would those created during the transitional period.

These existing prescriptive rights would not generally appear in registry office records. At present, they will be binding upon innocent purchasers without notice since the Registry system is concerned with the registration of instruments and not with interests arising by implication of law or by prescription. (Section 78, dealing with equitable interests arising other than by instrument, is an exception.) However, where a prescriptive right has been established in an action, it is possible to register the judgment as an "instrument" so that the prescriptive easement would be entered on the abstracts for both the servient and dominant tenements. Nevertheless, there is no requirement that this should be done.

There may also be prescriptive rights affecting land governed by *The Land Titles Act*, which do not appear on the Land Titles records. If such rights were in existence at the time those lands were first brought into Land Titles, then they continue to be binding.

It is obviously undesirable that there should be such a group of unrecorded interests which can adversely affect purchasers of land who may have no way of knowing of their existence. Furthermore, these interests may continue indefinitely into the future.

Should there be some requirement that the owners of, or claimants to, prescriptive rights take some steps so as to provide notice? Would it be practical and fair to impose on these persons such a requirement, with a proviso that if the requirement was not met their rights would be lost?

Such a requirement could be laid down in several ways. A person claiming a prescriptive right could be required to establish it in an action (as he is now under section 32 of *The Limitations Act*), and either notice of the action or the resulting judgment would be registered in the registry office. On the other hand, it might be sufficient for the claimant to simply file a notice that he claims a prescriptive right, the notice to be entered on the abstract for the servient tenement. If there was any doubt as to the validity of the claim, it could be resolved either in an action between the owners of the dominant and servient tenements or, in the event of a sale of either property, on a motion under *The Vendors and Purchasers Act* (R.S.O. 1960, c. 414).

The question of fairness is double-edged. There would most certainly be persons entitled to prescriptive rights who would not be aware of such a requirement, even if a lengthy period for registration were allowed. On the other hand, prescriptive rights, if unregistered, will work to the detriment of purchasers of land who have relied on the registry office abstract.

The Commission considers that the balance is in favour of having a registration system that reflects the title. It therefore recommends that either a judgment or notice of claim be required to be filed in the appropriate registry or land titles office within two years after the end of the ten year transitional period. If such a judgment or notice of claim was not filed by that time, the prescriptive right would lapse. Thus, twelve years after the abolition, there would no longer be any unregistered prescriptive rights. A person who had a prescriptive right at the time of abolition would have twelve years to register it. There should be a requirement that the owner of the servient land be notified of any notices of claim so registered.

The harshness of the registration requirement in those cases where the owners of the dominant lands would not be aware of the requirement could be tempered to a large extent by providing for an extension of time in cases of substantial hardship. The Commission recommends such an extension of time provision.

(d) *Summary of Recommendations*

The Commission's recommendations in this chapter may be summarized:

1. *Except for the transitional period recommended below, the right to acquire easements and profits-à-prendre by prescription in the future should be abolished, by*
 - (i) *declaring by statute that the doctrine of the lost modern grant is no longer part of the law of Ontario; and*
 - (ii) *repealing sections 30 to 35, and 39 to 41 of The Limitations Act and not replacing these provisions in any new limitations statute.*
2. *Prescriptive easements and profits-à-prendre should be capable of creation during a ten-year transitional period on the following basis:*
 - (i) *as soon as the person having the benefit of the adverse enjoyment has the required period of enjoyment under the existing law;*
 - (ii) *at the end of the transitional period, if there has been continuous adverse enjoyment for at least ten years, but insufficient length of enjoyment under the existing law.*
3. *If the recommendation of abolition is implemented, then the requirement for an action provided for by section 32 of The Limitations Act should not apply to persons*
 - (i) *having, at the time of abolition, the required adverse enjoyment under the present law, and*

- (ii) *acquiring, during the transitional period, the required adverse enjoyment under the transitional provisions.*

4. (1) *Prescriptive easements and profits-à-prendre should lapse two years after the end of the transitional period, unless the persons entitled to their benefit have filed a judgment or notice of claim in the appropriate registry or land titles offices, such judgment or notice to be entered on the records relating to the appropriate servient tenement. Notification of the registration of any such notice of claim should be given to the owner of the servient land.*

(2) *Where a person has failed to file his judgment or notice in time, he should be able to apply to a judge of the country or district in which any of the relevant lands are situated for an extension of time on the grounds of substantial hardship. The extension should only be granted:*

- (i) *if the applicant is able to demonstrate that the loss of enjoyment would result in substantial hardship, and*
- (ii) *if the applicant had been unaware of the registration requirement during the registration period.*

CHAPTER IX

SUMMARY OF RECOMMENDATIONS

S U M M A R Y

- A. GENERAL
- B. THE PERIODS RECOMMENDED
- C. THE RUNNING OF TIME
- D. MISCELLANEOUS
- E. SPECIAL LIMITATION PERIODS
- F. PRESCRIPTIVE EASEMENTS AND PROFITS-À-Prendre

The recommendations of the Commission are set out below. The page at which each recommendation may be found in the body of the Report is indicated.

A. GENERAL

1. *The Limitations Act* should be replaced with a statute that is contemporary both in language and substance. (p. 174)
2. (a) As a general principle, the bringing of every kind of action should be subject to some specific limitation period;
(b) The statute proposed by the Commission should establish limitation periods for all causes of action, except for:
 - (i) those actions which the Commission later recommends should remain the subject of special provisions imposed by other statutes, and
 - (ii) proceedings by way of judicial review of the exercise of statutory powers. (p. 23)
3. With respect to all causes of action, the lapse of the specified limitation period without an action having been brought should have the effect of extinguishing the right instead of merely barring the remedy. (p. 133)

B. THE PERIODS PROPOSED BY THE COMMISSION

1. *General*

There should be four general limitation periods, as follows:

Six Years

All causes of action not otherwise provided for.

Twenty Years

Actions on judgments.

Ten Years

Actions:

- (a) on deeds,
- (b) to recover land,
- (c) with respect to charges on property, and
- (d) for serious breaches of trust.

Two Years

Actions for:

- (a) damages for injury to the person or property (whether based on contract, tort, or statutory duty),
- (b) malicious prosecution,
- (c) seduction,
- (d) defamation, and
- (e) the recovery of penalties imposed by statute. (pp. 31-32)

2. *Contracts and Torts*

Contracts and torts should be governed by the following limitation periods:

Two Years

- (a) Personal injury and property damage actions, whether or not such actions are based on contract, tort, or statutory or other legal duty,
- (b) Actions under *The Fatal Accidents Act*,
- (c) Malicious prosecution, false imprisonment, seduction and libel and slander actions.

Six Years

- (a) Actions for wrongful detention or conversion of personal property, and
- (b) All other actions in contract (except those arising out of deeds) and tort. (p. 42)

3. *Specialties and Recognizances*

- (a) Actions on recognizances should be subject to a six-year limitation period;
- (b) The term "specialty" should not be used in the proposed statute;
- (c) Actions for obligations arising out of statutes should be subject to a six-year limitation period; and
- (d) Actions arising out of deeds should be subject to a ten-year limitation period. (pp. 46-47)

4. *Judgments and Orders*

- (a) The twenty-year period for actions on judgments be retained;
- (b) Orders for the payment of money should be treated in the same way as judgments;
- (c) It should not be possible to sue on a judgment given in the Ontario courts for the purpose of obtaining a fresh judgment;
- (d) Once the twenty-year period has run, no further action should be taken on the judgment, unless there is at that time an unexpired writ of execution outstanding;
- (e) Once the twenty-year period has run, if there is an unexpired writ of execution outstanding, the judgment creditor should be able to, as he now can:
 - (i) continue to proceed on that unexpired writ, and
 - (ii) renew such a writ indefinitely;
- (f) Foreign judgments and orders should continue to be governed by a six-year period and not be treated in the same way as local judgments: for clarification, however, the proposed statute should expressly exclude foreign judgments from the provision establishing a twenty-year period for local judgments and orders. (p. 51)

5. *Penalties*

- (a) All civil actions for the recovery of fines and penalties be subject to a two-year period;
- (b) The language of the provision replacing clauses (h) and (m) of section 45 (1) make clear that only fines and penalties are to be covered by it, the references to "damages or a sum of money given by any statute" to be omitted. (p. 53)

6. *Trusts*

- (a) All actions for breach of trust should be subject to some limitation period;
- (b) There should be no distinction made between different kinds of trusts (i.e., express, implied, resulting and constructive trusts should be treated in the same way);
- (c) Executors and administrators should be treated as trustees for the purposes of limitations;
- (d) Limitation periods should be applicable to actions as follows:

Ten Years

Actions against the personal representatives of a deceased person for a share of the estate, whether that person left a will or died intestate,

Actions in respect of any fraud or fraudulent breach of trust to which the trustee was party or privy,

Actions against a trustee for the conversion of trust property to his own use,

Actions to recover trust property, or property into which trust property can be traced, against a trustee or any other person,

Actions to recover money on account of a wrongful distribution of trust property, against the person to whom the property is distributed, or his successor.

Six Years

All other actions brought in respect of a breach of trust for which a period of limitation is not prescribed by some other provision of the proposed statute.

- (e) Time should not run against a beneficiary with respect to an action
 - (i) based on any fraud or fraudulent breach of trust to which the trustee was a party or privy, or
 - (ii) to recover from the trustee trust property, or the proceeds thereof, in the possession of the trustee, or previously received by the trustee and converted to his own use,

until the beneficiary becomes fully aware of the fraud, fraudulent breach of trust, conversion or other act of the trustee on which the action would be based, the onus of proof of which should rest on the trustee.

Time should not run against a beneficiary in respect of a future interest in trust property until the interest becomes a present interest.

- (f) A statute-barred beneficiary should not be able to improve his position if another beneficiary, who is not statute-barred, makes a successful claim. (pp. 60-61)

7. *Recovery of Land and Charges on Property*

- (a) There should be separate provisions in the proposed statute dealing with actions:

- (i) to recover land, and
- (ii) relating to charges on both real and personal property;

- (b) Actions relating to charges against real and personal property should include any proceedings to:

- (i) enforce a rent charge,
- (ii) enforce a mortgage by foreclosure, by exercising a power of sale, taking possession or any other means,
- (iii) enforce a contract for the conditional sale of goods by seizure or otherwise,
- (iv) enforce an agreement for the sale of land,
- (v) enforce a lien,
- (vi) redeem mortgaged property in the hands of a mortgagee,
- (vii) enforce a purchaser's right under a contract for the conditional sale of goods or an agreement for the sale of land;

- (c) Actions to recover land and relating to charges on both real and personal property should be subject to a ten-year limitation period (as is the case at present with respect to actions brought under sections 4, 19 and 23 of *The Limitations Act*);

- (d) Where the property subject to the charge is an unmatured life insurance policy, time should not begin to run until the policy has matured;

- (e) In any action or proceeding, no more than six years arrears of:

- (i) interest, whether owing in respect of a charge on property or not, or
- (ii) rent,

should be recoverable;

- (f) The rules which entitle a mortgagee to payment of statute-barred arrears of interest in redemption actions or out of the proceeds of sale of the mortgaged property should be abolished.
(pp. 72-73)

8. *"Catch-all" Provision*

All causes of action should be subject to a six-year limitation period except where the proposed statute, or some other statute, has otherwise prescribed. (p. 63)

C. THE RUNNING OF TIME

1. *Accrual of Actions*

In cases which are based on breach of a duty to take care, whether the duty arises in tort, contract or by statute, time should run from the occurrence of damage. (pp. 92-93)

2. *Postponement*

(a) *Absence from Jurisdiction*

No provision should be made to postpone or suspend the running of time in the absence from the jurisdiction of either a potential plaintiff or a potential defendant. (pp. 94, 96)

(b) *Disabilities: Infancy and Mental Incapacity*

- (i) There should be one general provision relating to disabilities which would apply to all causes of action;
- (ii) The running of time should be suspended, whether or not the disability existed at the time the cause of action accrued to that person;
- (iii) Time should begin to run against a person when he ceases to be under a disability on the following basis:

The person would then be entitled to the longer of either:

- (a) the period which he would have had to bring his action had he not been under a disability, running from the time that the cause of action arose, or
- (b) such period running from the time that the disability ceased except that in no case should that period extend more than six years beyond the cessation of disability;
- (iv) the provision recommended above with regard to disability should not apply where:
 - (a) an infant is in the custody of a parent or guardian,
or

- (b) the affairs of a person of unsound mind are being administered by a committee or the Public Trustee,

except where an action is being brought by the infant against such parent or guardian or by the person who was of unsound mind (or on his behalf, if he is still of unsound mind) against such committee or the Public Trustee;

- (v) The onus of showing that a person is entitled to the benefit of the disability provision should rest on the person claiming that benefit;
- (vi) "Disability" should be defined in such a way as to extend the meaning of "unsound mind" to all situations where a person cannot manage his affairs because of any disease or any impairment of his physical or mental condition;
- (vii) In land actions, the maximum period of twenty years for bringing actions, when disabilities are being taken into account, should be retained. (pp. 99-100)

(c) *Absence of Knowledge*

1. *General*

- (a) There should be an extension procedure where the plaintiff is not aware that he has a cause of action;
- (b) The extension procedure should only be applicable to:
 - (i) Personal injury actions,
 - (ii) Property damage actions, and
 - (iii) Professional negligence actions not covered by (i) and (ii);
- (c) The extension should be granted where a potential plaintiff was unaware of material facts which, if he were a reasonable person knowing those facts and having obtained appropriate advice with respect to them, would have been of a decisive character in determining that he had an action,
 - (i) which would have a reasonable prospect of succeeding, and
 - (ii) result in the award of damages sufficient to justify bringing it;

- (d) Applications for extension should be made to the court which would have jurisdiction over the action and should be required to be made within twelve months from the time the potential plaintiff became aware of the relevant material facts;
- (e) Notice of such an application should be served on the potential defendant. (pp. 108-109)

2. *Fraud and Mistake*

- (a) There should be one general provision dealing with the postponement of time in fraud and mistake cases;
- (b) Such a provision should apply where:
 - (i) an action is based on fraud or deceit,
 - (ii) a right of action, or the identity of the person against whom the action lies, is fraudulently concealed, and
 - (iii) an action is for relief from the consequences of a mistake;
- (c) In such cases, time should not begin to run until the plaintiff has discovered the fraud, deceit, fraudulent concealment or the mistake, as the case may be, or could with reasonable diligence have discovered it;
- (d) Such a provision should not operate to the detriment of a *bona fide* purchaser for value. (p. 111)

(d) *Pleading and Procedural Problems*

- (i) *Set-offs, Counterclaims, Adding of Parties, and Tortfeasors' Claim for Contribution*
 - (a) Any claim by way of set-off, counterclaim, the adding of parties under Rule 136, or third party proceedings shall be deemed to be a separate action and to have been commenced on the same date as the action in which the set-off or counterclaim is made, or the parties added under Rule 136, or the third party proceedings are taken; and
 - (b) Section 9 of *The Negligence Act* should be repealed and a similar provision should be included in the proposed statute. (p. 113)

(ii) *Amendment of Pleadings*

In any action, the court should be able to allow the amendment of any pleading or other proceedings, or an application for a change of party, upon such terms as to costs or otherwise as the court deems just, notwithstanding that, between time of the issue of the writ and the application for amendment or change of party, a fresh cause of action disclosed by the amendment or the cause of action against the new party would have been barred by a limitation provision. (p. 115)

(e) *Acknowledgment and Part Payment*

- (i) There should be one general provision dealing with acknowledgment;
- (ii) Acknowledgment (including a part payment) should start time running afresh where time has not yet lapsed and there is a right:
 - (a) to recover any liquidated sum,
 - (b) to recover land, and
 - (c) with respect to charges on property,
 - (i) to enforce the charge, or
 - (ii) to obtain relief from the enforcement of the charge;
- (iii) An acknowledgment (including a part payment) to be effective must in all cases be given by the person liable or his agent to the person entitled to the right or his agent;
- (iv) An acknowledgment, other than a part payment, must be in writing and signed by the person (or his agent) making the acknowledgment;
- (v) It should not be necessary to show a promise to pay; and
- (vi) No change should be made in the Ontario rule that an acknowledgment (including a part payment) by one co-debtor does not bind another co-debtor. (p. 125)

D. MISCELLANEOUS RECOMMENDATIONS

1. *Equitable Defences*

- (a) Acquiescence should remain available as a defence to the extent that it now is;

- (b) Laches should only be available as a defence with respect to those claims for equitable relief in aid of a legal right which may now be defeated by laches. (p. 23)

2. *Conflict of Laws*

The proposed statute contain a provision that Ontario limitations laws and the analogous law of any other province, or of any state or country, shall be classified as substantive law for the purposes of private international law (conflict of laws), whether or not the particular law bars the remedy or extinguishes the right. (p. 136)

3. *The Crown*

- (a) (i) The proposed statute should apply to proceedings by and against the Crown in the same way as it applies with respect to ordinary persons, except with respect to actions to recover Crown lands,
- (ii) Actions to recover Crown lands should be subject to a limitation period of thirty years, although the present exceptions contained in section 16 of *The Limitations Act* should be retained.
- (b) The proposed statute should apply not only to the Crown in right of Ontario but also, so far as the legislative power of the province permits, the Crown in all its other capacities. (p. 140)

E. SPECIAL LIMITATION PERIODS

1. The following special limitation provisions should be repealed:

- (a) s. 147 of *The Highway Traffic Act*,
- (b) s. 17 of *The Motor Vehicle Accident Act, 1961-62*,
- (c) s. 33 (5) of *The Highway Improvement Act*,
- (d) s. 443 (2) of *The Municipal Act*,
- (e) s. 43 of *The Medical Act*,
- (f) s. 29 of *The Dentistry Act*,
- (g) s. 57 of *The Pharmacy Act*,
- (h) s. 13 of *The Radiological Technicians Act*,
- (i) s. 18 of *The Veterinarians Act*,
- (j) s. 21 of *The Embalmers and Funeral Directors Act*,
- (k) s. 49 of *The Private Sanatoria Act*,
- (l) s. 33 of *The Public Hospitals Act*,

- (m) s. 53 of *The Sanatoria for Consumptives Act*,
 - (n) s. 58 of *The Mental Health Act, 1967*,
 - (o) s. 10 (2) of *The Mental Hospitals Act*,
 - (p) s. 12r (1) of *The Ontario Mental Health Foundation Act, 1960-61*,
 - (q) s. 11 of *The Public Authorities Protection Act*,
 - (r) s. 12 of *The Public Officers Act*,
 - (s) s. 86 of *The Telephone Act*,
 - (t) s. 32 of *The Public Utilities Act*,
 - (u) s. 267 (1) of *The Railways Act*,
 - (v) s. 6 of *The Libel and Slander Act*,
 - (w) s. 5 of *The Fatal Accidents Act*, and
 - (x) s. 38 (4) of *The Trustee Act*;
2. The proposed limitation statute should expressly provide that actions brought under *The Fatal Accidents Act* be governed by the two-year period, with time running from the date of death;
 3. The proposed limitation statute should expressly provide that actions brought against the Registrar under *The Motor Vehicle Accident Claims Act, 1961-62* be governed by the two-year period;
 4. The time for giving the notice required by section 5 (1) of *The Libel and Slander Act* should be increased to three months;
 5. In respect of the following notice of claim provisions, failure to notify within the required time should not be a bar to the bringing of an action if in the opinion of a judge (either the judge before whom the action is tried or a judge on a preliminary application) such a result would be unjust:
 - (a) s. 33 (4) of *The Highway Improvement Act*,
 - (b) s. 6a (3) of *The Proceedings Against the Crown Act*,
 - (c) s. 443 (5) of *The Municipal Act*,
 - (d) s. 32 (2) of *The Power Commission Act*, and
 - (e) s. 5 (1) of *The Libel and Slander Act*.
 6. The provisions of the proposed statute regarding the postponement, suspension and extension of time should apply to all special limitation periods that remain unrepealed, unless the statutes creating those special limitation periods expressly provide otherwise. (pp. 84-85)

F. PREScriptive EASEMENTS AND PROFITS-À-PRENDRE

1. Except for the transitional period recommended below, the right to acquire easements and *profits-à-prendre* by prescription in the future should be abolished, by
 - (a) declaring by statute that the doctrine of the lost modern grant is no longer part of the law of Ontario; and
 - (b) repealing sections 30 to 35, and 39 to 41 of *The Limitations Act* and not replacing these provisions in any new limitations statute.
2. Prescriptive easements and *profits-à-prendre* should be capable of creation during a ten-year transitional period on the following basis:
 - (a) as soon as the person having the benefit of the adverse enjoyment has the required period of enjoyment under the existing law,
 - (b) at the end of the transitional period, if there has been continuous adverse enjoyment for at least ten years, but insufficient length of enjoyment under the existing law.
3. If the recommendation of abolition is implemented, then the requirement for an action provided for by section 32 of *The Limitations Act* should not apply to persons,
 - (a) having, at the time of abolition, the required adverse enjoyment under the present law, and
 - (b) acquiring, during the transitional period, the required adverse enjoyment under the transitional provisions.
4. (1) Prescriptive easements and *profits-à-prendre* should lapse two years after the end of the transitional period, unless the persons entitled to their benefit have filed a judgment or notice of claim in the appropriate registry or land titles office, such judgment or notice to be entered on the records relating to the appropriate servient tenement. Notification of the registration of any such notice of claim should be given to the owner of the servient land.
- (2) Where a person has failed to file his judgment or notice in time, he should be able to apply to a judge of the county or district in which any of the relevant lands are situated for an extension of time on the grounds of substantial hardship. The extension should only be granted:
 - (a) if the applicant is able to demonstrate that the loss of enjoyment would result in substantial hardship, and
 - (b) if the applicant had been unaware of the registration requirement during the registration period. (pp.160-161)

CONCLUSION

This Report sets out the principles which should be embodied in the Province's limitations laws. The Commission recommends that *The Limitations Act* should be replaced with a new limitations statute that will be contemporary both in substance and language.

In the conduct of its programme, the Commission has always been committed to the need for comparative research and been aware of the benefits to be derived from the experience in other jurisdictions. We have good reason to be grateful for the assistance afforded by the work of others in this particular field. Special mention should be made again of the Report of the Law Reform Commission of New South Wales on the Limitation of Actions, October, 1967 (L.R.C. 3).

In recent months a lively interest in the subject of limitations has been exhibited by the Law Society of Upper Canada, the County of York Law Association, and the Civil Justice Section, Ontario Branch of the Canadian Bar Association. It is gratifying to us to learn that there is a widespread interest in the rationalization and reform of this important area of the law.

We wish particularly to express our thanks to Dr. Richard Gosse, Q.C., Counsel to the Commission, for his invaluable assistance. The Report bears the stamp of his devotion, energy and scholarship.

All of which is respectfully submitted,

H. ALLAN LEAL,
Chairman.

JAMES C. McRUER,
Commissioner.

RICHARD A. BELL,
Commissioner.

W. GIBSON GRAY,
Commissioner.

WILLIAM R. POOLE,
Commissioner.

February 3, 1969.

APPENDIX A

TABLE SHOWING ENGLISH LEGISLATION ON WHICH PRESENT ONTARIO
STATUTE OF LIMITATIONS IS BASED AND WHEN FIRST ADOPTED IN
ONTARIO

Ontario's Present Limitations Act	English Legislation on which based	When first adopted in Ontario
1	Real Property Limitation Act, 1833 3 & 4 Will. IV, c. 27, s. 1	1834 4 Will. IV, c. 1, s. 59
2	s. 27	s. 35
3	Crown Suits Act, 1769 9 Geo. III, c. 16	1792
4	Real Property Limitation Act, 1833 3 & 4 Will. IV, c. 27, s. 2 (See also Real Property Limitation Act, 1874 37 & 38 Vict., c. 57, s. 1)	1834 4 Will. IV, c. 1, s. 16 (See also 38 Vict., c. 16, s. 1)
5 (1)	Real Property Limitation Act, 1833 3 & 4 Will. IV, c. 27, s. 3	1834 4 Will. IV, c. 1, s. 17
(2)	s. 3	s. 17
(3)	s. 3	s. 17
(4)	—	s. 17
(5)	s. 9	s. 21
(6)	s. 8	s. 20
(7)	s. 7	s. 19
(8)	s. 7	s. 19
(9)	s. 3	s. 17
(10)	s. 4	s. 17
(11)	s. 3	s. 17
(12)	s. 5	s. 17
	(See also Real Property Limitation Act, 1874 37 & 38 Vict., c. 57, s. 2)	(See also 38 Vict., c. 16, s. 2)

Ontario's Present Limitations Act	English Legislation on which based	When first adopted in Ontario
6 (1)	Real Property Limitation Act, 1874 37 & 38 Vict., c. 57, s. 2	1874 38 Vict., c. 16, s. 3
(2)	s. 2	s. 4
(3)	Real Property Limitation Act, 1833 3 & 4 Will. IV, c. 27, s. 20	1834 4 Will. IV, c. 1, s. 31
7	s. 6	s. 18
8	s. 10	s. 22
9	s. 11	s. 23
10	s. 39	s. 42
11	s. 12	s. 24
12	s. 13	s. 25
13	s. 14	s. 26
14	s. 35	s. 38
15	s. 34	s. 37
16	—	1902 2 Edw. VII, c. 1, s. 19
17	s. 42	1834 4 Will. IV, c. 1, s. 45
18	s. 42	s. 42
19	s. 28	s. 36
	(See also Real Property Limitation Act, 1874 37 & 38 Vict., c. 57, s. 7)	(See also 38 Vict., c. 16, s. 8)
20	Real Property Limitation Act, 1833 3 & 4 Will. IV, c. 27, s. 28 (See also Real Property Limitation Act, 1874 37 & 38 Vict., c. 57, s. 7)	1834 4 Will. IV, c. 1, s. 36 (See also 38 Vict., c. 16, s. 9)

Ontario's Present Limitations Act	English Legislation on which based	When first adopted in Ontario
21	Real Property Limitation Act, 1833 3 & 4 Will. IV, c. 27, s. 28 (See also Real Property Limitation Act, 1874 37 & 38 Vict., c. 57, s. 7)	1834 4 Will. IV, c. 1, s. 36 (See also 38 Vict., c. 16, s. 10)
22	Real Property Limitation Act, 1837 7 Will. IV & 1 Vict., c. 28 (See also Real Property Limitation Act, 1874 37 & 38 Vict., c. 57, s. 9)	1853 16 Vict., c. 121 (See also 38 Vict., c. 16, s. 12)
23 (1)	Real Property Limitation Act, 1833 3 & 4 Will. IV, c. 27, s. 40 (See also Real Property Limitation Act, 1874 37 & 38 Vict., c. 57, s. 8)	1834 4 Will. IV, c. 1, s. 43 (See also 38 Vict., c. 16, s. 11)
(2)	—	1905 5 Edw. VII, c. 13, s. 10
24	Real Property Limitation Act, 1874 37 & 38 Vict., c. 57, s. 10	1874 38 Vict., c. 16, s. 13
25	—	1861 24 Vict., c. 40, s. 18 (See also 32 Vict., c. 7, s. 22; and 38 Vict., c. 16, s. 14)
26	—	1880 43 Vict., c. 14, s. 3
27	Real Property Limitation Act, 1833 3 & 4 Will. IV, c. 27, s. 41	1834 4 Will. IV, c. 1, s. 44
28	s. 26	s. 34
29	s. 26	s. 34
30	Prescription Act, 1832 2 & 3 Will. IV, c. 71, s. 1	1847 10 & 11 Vict., c. 5, s. 1
31	s. 2	s. 2

Ontario's Present Limitations Act	English Legislation on which based	When first adopted in Ontario
32	s. 4	s. 4
33	s. 3	(This provision re- pealed in Ontario in 1880. 43 Vict., c. 14, s. 1)
34	s. 6	s. 6
35	—	1904 4 Edw. VII, c. 10, s. 74
36	Real Property Limitation Act, 1833 3 & 4 Will. IV, c. 27, s. 16 (See also Real Property Limitation Act, 1874 37 & 38 Vict., c. 57, s. 3)	1834 4 Will. IV, c. 1, s. 28 (See also 38 Vict., c. 16, s. 5)
37	Real Property Limitation Act, 1833 3 & 4 Will. IV, c. 27, s. 17 (See also Real Property Limitation Act, 1874 37 & 38 Vict., c. 57, s. 5)	1834 4 Will. IV, c. 1, s. 29 (See also 38 Vict., c. 16, s. 6)
38	Real Property Limitation Act, 1833 3 & 4 Will. IV, c. 27, s. 18	1834 4 Will. IV, c. 1, s. 30
39	Prescription Act, 1832 2 & 3 Will. IV, c. 71, s. 7	1847 10 & 11 Vict., c. 5, s. 6
40	s. 8	s. 7
41	—	s. 8
42	Trustee Act, 1888 51 & 52 Vict., c. 59, s. 12	1891 54 Vict., c. 19, s. 14
43	ss. 1 and 8	ss. 1 and 13
44 (1)	Real Property Limitation Act, 1833 3 & 4 Will. IV, c. 27, s. 25	1834 4 Will. IV, c. 1, s. 33
(2)	Supreme Court of Judicature Act, 1873 36 & 37 Vict., c. 66, s. 25 (2)	1881 44 Vict., c. 5, s. 17 (2)

Ontario's Present Limitations Act	English Legislation on which based	When first adopted in Ontario
45 (1) (a) Civil Procedure Act, 1833 to (f), 3 & 4 Will., c. 42, s. 3 (h) (As to clause (h), see also Common Informers Act, 1588 31 Eliz. 1, c. 5, s. 5)		1837 7 Will. IV, c. 3, s. 3 (Judgments were in- cluded in s. 45 (1) (c) in 1949. See S.O. 1949, c. 51, s. 1. See also 1 Edw. VII, c. 12, s. 9 as to clause (h).)
(1) (g), Limitation Act, 1623 (i) 21 Jac. 1, c. 16 and (j)		1792
(1) (k)	—	1893 56 Vict., c. 17, s. 1 (See also S.O. 1939, c. 25, s. 1)
(1) (l)	—	1939 c. 25, s. 1
(1) (m) Common Informers Act, 1588 31 Eliz. 1, c. 5, s. 5		1792 (See also 4 Edw. VII, c. 10, s. 20)
(2) Civil Procedure Act, 1833 3 & 4 Will., c. 42, s. 3		1837 7 Will. IV, c. 3, s. 3
46 Mercantile Law Amendment Act, 1856 19 & 20 Vict., c. 97, s. 9		1863 26 Vict., c. 45, s. 5
47 Limitation Act, 1623 21 Jac. 1, c. 16, s. 7 Civil Procedure Act, 1833 3 & 4 Will. 4, c. 42, s. 4		1792 1837 7 Will. IV, c. 3, s. 4
48 Administration of Justice Act, 1705 4 & 5 Ann., c. 3, s. 19		1792
49 Mercantile Law Amendment Act, 1856 19 & 20 Vict., c. 97, s. 11		1863 26 Vict., c. 45, ss. 6 and 7

Ontario's Present Limitations Act	English Legislation on which based	When first adopted in Ontario
50 (1)	Civil Procedure Act, 1833 3 & 4 Will, 4. c. 42, s. 5	1837
(2)	—	1939 c. 25, s. 2
51	Statute of Frauds Amendment Act, 1828 9 Geo. IV, c. 14, s. 1 (See also Mercantile Law Amendment Act, 1856 19 & 20 Vict., c. 97, s. 13)	1850 13 & 14 Vict., c. 61, s. 1 (See also 26 Vict., c. 45, s. 8) (Note: s. 51 (2) was omitted in 1850, but was inserted in the 1910 consolidation statute in a different position. See S.O. 1910, c. 34, s. 55 (2).)
52	Statute of Frauds Amendment Act, 1828 9 Geo. IV, c. 14, s. 1	1850 13 & 14 Vict., c. 61, s. 1
53	s. 1	s. 1
54	s. 3	s. 3
55	s. 4	s. 4

APPENDIX B

THE LIMITATIONS ACT

Revised Statutes of Ontario, 1960

CHAPTER 214

1. In this Act,

Interpre-
tation

- (a) "action" includes an information on behalf of the Crown and any civil proceeding;
- (b) "assurance" means a deed or instrument, other than a will, by which land may be conveyed or transferred;
- (c) "land" includes messuages and all other hereditaments, whether corporeal or incorporeal, chattels and other personal property transmissible to heirs, money to be laid out in the purchase of land, and any share of the same hereditaments and properties or any of them, any estate of inheritance, or estate for any life or lives, or other estate transmissible to heirs, any possibility, right or title of entry or action, and any other interest capable of being inherited, whether the same estates, possibilities, rights, titles and interest or any of them, are in possession, reversion, remainder or contingency;
- (d) "rent" includes all annuities and periodical sums of money charged upon or payable out of land. R.S.O. 1950, c. 207, s. 1.

PART I

REAL PROPERTY

2. Nothing in this Act interferes with any rule of equity in refusing relief on the ground of acquiescence, or otherwise, to any person whose right to bring an action is not barred by virtue of this Act. R.S.O. 1950, c. 207, s. 2.

Refusing
relief
because of
acquiescence
or otherwise

3.—(1) No entry, distress, or action shall be made or brought on behalf of Her Majesty against any person for the recovery of or respecting any land or rent, or of land or for or concerning any revenues, rents, issues or profits, but within sixty years next after the right to make such entry or distress or to bring such action has first accrued to Her Majesty.

Limitation
where the
Crown
interested

Application
of certain
sections to
Crown

(2) Subsections 1 to 3, 5 to 7 and 9 to 12 of section 5 and sections 6, 8 to 11 and 13 to 15 apply to rights of entry, distress or action asserted by or on behalf of Her Majesty. R.S.O. 1950, c. 207, s. 3.

Limitation
where the
subject
interested

4. No person shall make an entry or distress, or bring an action to recover any land or rent, but within ten years next after the time at which the right to make such entry or distress, or to bring such action, first accrued to some person through whom he claims, or if the right did not accrue to any person through whom he claims, then within ten years next after the time at which the right to make such entry or distress, or to bring such action, first accrued to the person making or bringing it. R.S.O. 1950, c. 207, s. 4.

When right
accrues on
dispossession

5.—(1) Where the person claiming such land or rent, or some person through whom he claims, has, in respect of the estate or interest claimed, been in possession or in receipt of the profits of the land, or in receipt of the rent, and has, while entitled thereto, been dispossessed, or has discontinued such possession or receipt, the right to make an entry or distress or bring an action to recover the land or rent shall be deemed to have first accrued at the time of the dispossession or discontinuance of possession, or at the last time at which any such profits or rent were so received.

On death

(2) Where the person claiming such land or rent claims the estate or interest of a deceased person who continued in such possession or receipt, in respect of the same estate or interest, until the time of his death, and was the last person entitled to such estate or interest who was in such possession or receipt, the right shall be deemed to have first accrued at the time of such death.

On alienation

(3) Where the person claiming such land or rent claims in respect of an estate or interest in possession, granted, appointed or otherwise assured by an assurance to him or some person through whom he claims, by a person being, in respect of the same estate or interest, in the possession or receipt of the profits of the land, or in receipt of the rent, and no person entitled under the assurance has been in possession or receipt, the right shall be deemed to have first accrued at the time at which the person so claiming or the person, through whom he claims, became entitled to such possession or receipt by virtue of the assurance.

As to land
not cultivated or
improved

(4) In the case of land granted by the Crown of which the grantee, his heirs or assigns, by themselves, their servants or agents, have not taken actual possession by residing upon or cultivating some part thereof, and of which some other person not claiming to hold under such grantee has been in possession, such possession having been taken while the

land was in a state of nature, then unless it is shown that the grantee or person claiming under him while entitled to the land had knowledge of it being in the actual possession of such other person, the lapse of ten years does not bar the right of the grantee or any person claiming under him to bring an action for the recovery of the land, but the right to bring an action shall be deemed to have accrued from the time that such knowledge was obtained, but no action shall be brought or entry made after twenty years from the time such possession was taken.

(5) Where a person is in possession or in receipt of the profits of any land, or in receipt of any rent by virtue of a lease in writing, by which a rent amounting to the yearly sum of \$4 or upwards is reserved, and the rent reserved by the lease has been received by some person wrongfully claiming to be entitled to the land or rent in reversion immediately expectant on the determination of the lease, and no payment in respect of the rent reserved by the lease has afterwards been made to the person rightfully entitled thereto, the right of the person entitled to the land or rent, subject to the lease, or of the person through whom he claims to make an entry or distress, or to bring an action after the determination of the lease, shall be deemed to have first accrued at the time at which the rent reserved by the lease was first so received by the person so wrongfully claiming, and no such right shall be deemed to have first accrued upon the determination of the lease to the person rightfully entitled.

Where rent reserved by lease in writing has been wrongfully received

(6) Where a person is in possession or in receipt of the profits of any land, or in receipt of any rent as tenant from year to year or other period, without any lease in writing, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress, or to bring an action to recover the land or rent, shall be deemed to have first accrued at the determination of the first of such years or other periods, or at the last time when any rent payable in respect of such tenancy was received, whichever last happened.

Where tenancy from year to year

(7) Where a person is in possession or in receipt of the profits of any land, or in receipt of any rent, as tenant at will, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress, or to bring an action to recover the land or rent, shall be deemed to have first accrued either at the determination of the tenancy, or at the expiration of one year next after the commencement of the tenancy, at which time the tenancy shall be deemed to have determined.

In the case of a tenant at will

(8) No mortgagor or *cestui que trust* shall be deemed to be a tenant at will to his mortgagee or trustee within the meaning of subsection 7.

Case of mortgagor or *cestui que trust*

In case of
forfeiture or
breach of
condition

(9) Where the person claiming such land or rent, or the person through whom he claims, has become entitled by reason of any forfeiture or breach of condition, such right shall be deemed to have first accrued when the forfeiture was incurred or the condition broken.

Where
advantage of
forfeiture is
not taken
by remain-
der man

(10) Where any right to make an entry or distress, or to bring an action to recover any land or rent, by reason of any forfeiture or breach of condition, has first accrued in respect of any estate or interest in reversion or remainder and the land or rent has not been recovered by virtue of such right, the right to make an entry or distress, or to bring an action to recover the land or rent, shall be deemed to have first accrued in respect of such estate or interest at the time when it became an estate or interest in possession as if no such forfeiture or breach of condition had happened.

In case of
future
estates

(11) Where the estate or interest claimed is an estate or interest in reversion or remainder, or other future estate of interest, and no person has obtained the possession or receipt of the profits of the land, or the receipt of the rent, in respect of such estate or interest, such right shall be deemed to have first accrued at the time at which such estate or interest became an estate or interest in possession.

Further
provision for
cases of
future
estates

(12) A right to make an entry or distress, or to bring an action to recover any land or rent, shall be deemed to have first accrued, in respect of an estate or interest in reversion or remainder or other future estate or interest at the time at which it became an estate or interest in possession, by the determination of any estate or estates in respect of which the land has been held or the profits thereof or the rent have been received, notwithstanding that the person claiming the land or rent, or some person through whom he claims, has, at any time before to the creation of the estate or estates that have determined, been in the possession or receipt of the profits of the land, or in receipt of the rent. R.S.O. 1950, c. 207, s. 5.

Limitation
in case of
future
estates when
person
entitled
to the parti-
cular estate
out of
possession
etc.

6.—(1) If the person last entitled to any particular estate on which any future estate or interest was expectant has not been in the possession or receipt of the profits of the land, or in receipt of the rent, at the time when his interest determined, no such entry or distress shall be made and no such action shall be brought by any person becoming entitled in possession to a future estate or interest but within ten years next after the time when the right to make an entry or distress, or to bring an action for the recovery of the land or rent, first accrued to the person whose interest has so determined, or within five years next after the time when the estate of the person becoming entitled in possession has become vested in possession, whichever of those two periods is the longer.

(2) If the right of any such person to make such entry or distress, or to bring any such action, has been barred, no person afterwards claiming to be entitled to the same land or rent in respect of any subsequent estate or interest under any deed, will or settlement executed or taking effect after the time when a right to make an entry or distress or to bring an action for the recovery of the land or rent, first accrued to the owner of the particular estate whose interest has so determined, shall make any entry or distress, or bring any action, to recover the land or rent.

The case of bar of future estate and of a subsequent interest created after right of entry, etc., accrued to owner of particular estate

(3) Where the right of any person to make an entry or distress, or to bring an action to recover any land or rent to which he has been entitled for an estate or interest in possession, has been barred by the determination of the period that is applicable in such case, and such person has, at any time during such period, been entitled to any other estate, interest, right or possibility, in reversion, remainder or otherwise, in or to the same land or rent, no entry, distress or action shall be made or brought by such person, or by any person claiming through him, to recover the land or rent in respect of such other estate, interest, right or possibility, unless in the meantime the land or rent has been recovered by some person entitled to an estate, interest or right which has been limited or taken effect after or in defeasance of such estate or interest in possession. R.S.O. 1950, c. 207, s. 6.

Bar of right to future estates acquired after bar of particular estate

7. For the purposes of this Act, an administrator claiming the estate or interest of the deceased person of whose property he has been appointed administrator shall be deemed to claim as if there had been no interval of time between the death of such deceased person and the grant of the letters of administration. R.S.O. 1950, c. 207, s. 7.

When right of action devolves to administrator

8. No person shall be deemed to have been in possession of any land within the meaning of this Act merely by reason of having made an entry thereon. R.S.O. 1950, c. 207, s. 8.

Effect of mere entry

9. No continual or other claim upon or near any land preserves any right of making an entry or distress or of bringing an action. R.S.O. 1950, c. 207, s. 9.

Continual claim

10. No descent cast, discontinuance or warranty, which has happened or been made since the 1st day of July, 1834, or which may hereafter happen or be made, shall toll or defeat any right of entry or action for the recovery of land. R.S.O. 1950, c. 207, s. 10.

Descent cast, discontinuance warranty etc.

11. Where any one or more of several persons entitled to any land or rent as coparceners, joint tenants or tenants in common has or have been in possession or receipt of the entirety, or more than his or their undivided share or shares of

Possession of one coparcener etc.

the land, or of the profits thereof, or of the rent for his or their own benefit, or for the benefit of any person or persons other than the person or persons entitled to the other share or shares of the same land or rent, such possession or receipt shall not be deemed to have been the possession or receipt of, or by the last-mentioned person or persons or any of them. R.S.O. 1950, c. 207, s. 11.

Possession
of relations

12. Where a relation of the persons entitled as heirs to the possession or receipt of the profits of any land, or to the receipt of any rent, enters into the possession or receipt thereof, such possession or receipt shall not be deemed to be the possession or receipt of or by the persons entitled as heirs. R.S.O. 1950, c. 207, s. 12.

Effect of
acknowledgment in
writing

13. Where any acknowledgment in writing of the title of the person entitled to any land or rent has been given to him or to his agent, signed by the person in possession or in receipt of the profits of the land, or in the receipt of the rent, such possession or receipt of or by the person by whom the acknowledgment was given shall be deemed, according to the meaning of this Act, to have been the possession or receipt of or by the person to whom or to whose agent the acknowledgment was given at the time of giving it, and the right of the last-mentioned person, or of any person claiming through him, to make an entry or distress or bring an action to recover the land or rent, shall be deemed to have first accrued at and not before the time at which the acknowledgment, or the last of the acknowledgments, if more than one, was given. R.S.O. 1950, c. 207, s. 13.

Effect of
receipt of
rent

14. The receipt of the rent payable by a lessee, shall, as against such lessee or any person claiming under him, but subject to the lease, be deemed to be the receipt of the profits of the land for the purposes of this Act. R.S.O. 1950, c. 207, s. 14.

Extinguish-
ment of
right at the
end of the
period of
limitation

15. At the determination of the period limited by this Act to any person for making an entry or distress or bringing any action, the right and title of such person to the land or rent, for the recovery whereof such entry, distress or action, respectively, might have been made or brought within such period, is extinguished. R.S.O. 1950, c. 207, s. 15.

Waste or
vacant land
of Crown
excepted

16. Nothing in sections 1 to 15 applies to any waste or vacant land of the Crown, whether surveyed or not, nor to lands included in any road allowance heretofore or hereafter surveyed and laid out or to any lands reserved or set apart or laid out as a public highway where the freehold in any such road allowance or highway is vested in the Crown or in a municipal corporation, commission or other public body, but nothing in this section shall be deemed to affect

or prejudice any right, title or interest acquired by any person before the 13th day of June, 1922. R.S.O. 1950, c. 207, s. 16.

17.—(1) No arrears of rent, or of interest in respect of any sum of money charged upon or payable out of any land or rent, or in respect of any legacy, whether it is or is not charged upon land, or any damages in respect of such arrears of rent or interest, shall be recovered by any distress or action but within six years next after the same respectively has become due, or next after any acknowledgment in writing of the same has been given to the person entitled thereto or his agent, signed by the person by whom the same was payable or his agent.

Maximum
of arrears of
rent or
interest
recoverable

(2) This section does not apply to an action for redemption brought by a mortgagor or a person claiming under him.

Exception
as to
action for
redemption

18. Where a prior mortgagee or other encumbrancer has been in possession of any land, or in the receipt of the profits thereof, within one year next before an action is brought by a person entitled to a subsequent mortgage or other encumbrance on the same land, the person entitled to the subsequent mortgage or encumbrance may recover in the action the arrears of interest that have become due during the whole time that the prior mortgagee or encumbrancer was in such possession or receipt, although the time may have exceeded the term of six years. R.S.O. 1950, c. 207, s. 18.

Exception in
favour of
subsequent
mortgagee
when a prior
mortgagee
has been in
possession

19. Where a mortgagee has obtained the possession or receipt of the profits of any land or the receipt of any rent comprised in his mortgage, the mortgagor, or any person claiming through him, shall not bring any action to redeem the mortgage but within ten years next after the time at which the mortgagee obtained such possession or receipt, unless in the meantime an acknowledgment in writing of the title of the mortgagor, or of his right to redemption, has been given to the mortgagor or to some person claiming his estate, or to the agent of such mortgagor or person, signed by the mortgagee, or the person claiming through him, and in such case no such action shall be brought but within ten years next after the time at which the acknowledgment, or the last of the acknowledgments if more than one, was given. R.S.O. 1950, c. 207, s. 19.

Limitation
where a
mortgagee
in
possession

20. Where there are more mortgagors than one or more persons than one claiming through the mortgagor or mortgagors, the acknowledgment, if given to any of such mortgagors or persons, or his or their agent, is as effectual as if it had been given to all such mortgagors or persons. R.S.O. 1950, c. 207, s. 20.

Acknowledgment
to one of
several
mortgagors

Acknowledgment to one of several mortgagees

21. Where there are more mortgagees than one or more persons than one claiming the estate or interest of the mortgagee or mortgagees, the acknowledgment, signed by one or more of such mortgagees or persons, is effectual only as against the person or persons so signing, and the person or persons claiming any part of the mortgage money or land or rent by, from, or under him, or them, and any person or persons entitled to any estate or estates, interest or interests, to take effect after or in defeasance of his or their estate or estates, interest or interests, and does not operate to give to the mortgagor or mortgagors a right to redeem the mortgage as against the person or persons entitled to any other undivided or divided part of the money or land or rent; and where such of the mortgagees or persons as have given the acknowledgment are entitled to a divided part of the land or rent comprised in the mortgage or some estate or interest therein, and not to any ascertained part of the mortgage money, the mortgagor or mortgagors are entitled to redeem the same divided part of the land or rent on payment, with interest, of the part of the mortgage money that bears the same proportion to the whole of the mortgage money as the value of the divided part of the land or rent bears to the value of the whole of the land or rent comprised in the mortgage. R.S.O. 1950, c. 207, s. 21.

Limitation where mortgage in arrear

22. Any person entitled to or claiming under a mortgage of land may make an entry or bring an action to recover the land at any time within ten years next after the last payment of any part of the principal money or interest secured by the mortgage, although more than ten years have elapsed since the time at which the right to make such entry or bring such action first accrued. R.S.O. 1950, c. 207, s. 22.

Limitation where money charged upon land and legacies

23.—(1) No action shall be brought to recover out of any land or rent any sum of money secured by any mortgage or lien, or otherwise charged upon or payable out of the land or rent, or to recover any legacy, whether it is or is not charged upon land, but within ten years next after a present right to receive it accrued to some person capable of giving a discharge for, or release of it, unless in the meantime some part of the principal money or some interest thereon has been paid, or some acknowledgment in writing of the right thereto signed by the person by whom it is payable, or his agent, has been given to the person entitled thereto or his agent, and in such case no action shall be brought but within ten years after the payment or acknowledgment, or the last of the payments or acknowledgments if more than one, was made or given.

Execution against land

(2) Notwithstanding subsection 1, a lien or charge created by the placing of an execution or other process against land in the hands of the sheriff or other officer to whom it is directed, remains in force so long as the execution or other

process remains in the hands of the sheriff or officer for execution and is kept alive by renewal or otherwise. R.S.O. 1950, c. 207, s. 23.

24. No action shall be brought to recover any sum of money or legacy charged upon or payable out of any land or rent and secured by an express trust, or to recover any arrears of rent or of interest in respect of any sum of money or legacy so charged or payable and so secured, or any damages in respect of such arrears, except within the time within which the same would be recoverable if there were not any such trust. R.S.O. 1950, c. 207, s. 24.

Time for recovering charges and arrears of interest not to be enlarged by express trusts for raising same

25. Subject to section 26, no action of dower shall be brought but within ten years from the death of the husband of the dowress, notwithstanding any disability of the dowress or of any person claiming under her. R.S.O. 1950, c. 207, s. 25.

Limitation of action of dower

26. Where a dowress has, after the death of her husband, actual possession of the land of which she is dowable, either alone or with an heir or devisee of, or a person claiming by devolution from her husband, the period of ten years within which her action of dower is to be brought shall be computed from the time when such possession of the dowress ceased. R.S.O. 1950, c. 207, s. 26.

Time from which right to bring action of dower to be computed

27. No arrears of dower, nor any damages on account of such arrears, shall be recovered or obtained by any action for a longer period than six years next before the commencement of such action. R.S.O. 1950, c. 207, s. 27.

Maximum of arrears of dower recoverable

28. In every case of a concealed fraud, the right of a person to bring an action for the recovery of any land or rent of which he or any person through whom he claims may have been deprived by the fraud shall be deemed to have first accrued at and not before the time at which the fraud was or with reasonable diligence might have been first known or discovered. R.S.O. 1950, c. 207, s. 31.

Cases where fraud remains concealed

29. Nothing in section 28 enables any owner of land or rent to bring an action for the recovery of the land or rent, or for setting aside any conveyance thereof, on account of fraud against any purchaser in good faith for valuable consideration, who has not assisted in the commission of the fraud, and who, at the time that he made the purchase did not know, and had no reason to believe, that any such fraud had been committed. R.S.O. 1950, c. 207, s. 32.

Case of bona fide purchaser for value without notice

30. No claim that may be made lawfully at the common law, by custom, prescription or grant, to any profit or benefit to be taken or enjoyed from or upon any land of the Crown, or of any person, except such matters or things as are here-

Limitation in case of profits

inafter specially provided for, and except rent and services, where the profit or benefit has been actually taken and enjoyed by any person claiming right thereto without interruption for the full period of thirty years, shall be defeated or destroyed by showing only that the profit or benefit was first taken or enjoyed at any time prior to the period of thirty years, but nevertheless the claim may be defeated in any other way by which it is now liable to be defeated, and when the profit or benefit has been so taken and enjoyed for the full period of sixty years, the right thereto shall be deemed absolute and indefeasible, unless it appears that it was taken and enjoyed by some consent or agreement expressly given or made for that purpose by deed or writing. R.S.O. 1950, c. 207, s. 33.

Right of
way ease-
ment, etc.

31. No claim that may be made lawfully at the common law, by custom, prescription or grant, to any way or other easement, or to any water-course, or the use of any water to be enjoyed, or derived upon, over or from any land or water of the Crown or being the property of any person, when the way or other matter as herein last before-mentioned has been actually enjoyed by any person claiming right thereto without interruption for the full period of twenty years shall be defeated or destroyed by showing only that the way or other matter was first enjoyed at any time prior to the period of twenty years, but, nevertheless the claim may be defeated in any other way by which it is now liable to be defeated, and where the way or other matter as herein last before-mentioned has been so enjoyed for the full period of forty years, the right thereto shall be deemed absolute and indefeasible, unless it appears that it was enjoyed by some consent or agreement expressly given or made for that purpose by deed or writing. R.S.O. 1950, c. 207, s. 34.

How period
to be calcu-
lated, and
what acts
deemed an
interruption

32. Each of the respective periods of years mentioned in sections 30 and 31 shall be deemed and taken to be the period next before some action wherein the claim or matter to which such period relates was or is brought into question, and no act or other matter shall be deemed an interruption within the meaning of those sections, unless the same has been submitted to or acquiesced in for one year after the person interrupted has had notice thereof, and of the person making or authorizing the same to be made. R.S.O. 1950, c. 207, s. 35.

Right to
access and
use of
light by
prescription
abolished

33. No person shall acquire a right by prescription to the access and use of light or to the access and use of air to or for any dwelling-house, work-shop or other building, but this section does not apply to any such right acquired by twenty years' use before the 5th day of March, 1880. R.S.O. 1950, c. 207, s. 36.

Necessity
for strict
proof

34. In the cases mentioned in and provided for by this Act, of claims to ways, water-courses or other easements, no

presumption shall be allowed or made in favour or support of any claim upon proof of the exercise or enjoyment of the right or matter claimed for any less period of time or number of years than for such period or number mentioned in this Act as is applicable to the case and to the nature of the claim. R.S.O. 1950, c. 207, s. 37.

35. No easement in respect of wires or cables attached to property or buildings or passing through or carried over such property or buildings shall be deemed to have been acquired or shall hereafter be acquired by prescription or otherwise than by grant from the owner of the property or buildings. R.S.O. 1950, c. 207, s. 38.

Easements
not acquired
for carrying
wires and
cables

36. If at the time at which the right of a person to make an entry or distress, or to bring an action to recover any land or rent, first accrues, as herein mentioned, such person is under the disability of infancy, mental deficiency, mental incompetency or unsoundness of mind, such person, or the person claiming through him, notwithstanding that the period of ten years or five years, as the case may be, hereinbefore limited has expired, may make an entry or distress, or bring an action, to recover the land or rent at any time within five years next after the time at which the person to whom the right first accrued ceased to be under any such disability, or died, whichever of those two events first happened. R.S.O. 1950, c. 207, s. 39.

Persons
under
disability at
the time
when the
right of
action
accrues

37. No entry, distress or action, shall be made or brought by any person, who, at the time at which his right to make any entry or distress, or to bring an action, to recover any land or rent first accrued was under any of the disabilities hereinbefore mentioned, or by any person claiming through him, but within twenty years next after the time at which the right first accrued, although the person under disability at such time may have remained under one or more of such disabilities during the whole of the twenty years, or although the term of five years from the time at which he ceased to be under any such disability or died, may not have expired. R.S.O. 1950, c. 207, s. 40.

Utmost
allowance
for
disabilities

38. Where a person is under any of the disabilities hereinbefore mentioned, at the time at which his right to make an entry or distress, or to bring an action to recover any land or rent first accrues, and dies without having ceased to be under any such disability, no time to make an entry or distress, or to bring an action to recover the land or rent beyond the period of ten years next after the right of such person to make an entry or distress, or to bring an action to recover the land or rent, first accrued or the period of five years next after the time at which such person died, shall be allowed by reason of any disability of any other person. R.S.O. 1950, c. 207, s. 41.

Succession
of
disabilities

Persons
under
disability
when right
accrues

39. The time during which any person otherwise capable of resisting any claim to any of the matters mentioned in sections 30 to 35, is an infant, mentally defective person, mentally incompetent person, of unsound mind, or tenant for life, or during which any action has been pending and has been diligently prosecuted, shall be excluded in the computation of the period mentioned in such sections, except only in cases where the right or claim is thereby declared to be absolute and indefeasible. R.S.O. 1950, c. 207, s. 42.

Exclusion of
terms of
years, etc.
from com-
putation in
certain cases

40. Where any land or water upon, over or from which any such way or other easement, water-course or use of water has been enjoyed or derived, has been held under or by virtue of any term of life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of any such way or other matter as herein last before-mentioned during the continuance of such term shall be excluded in the computation of the period of forty years mentioned in section 31, if the claim is within three years next after the end or sooner determination of such term, resisted by any person entitled to any reversion expectant on the determination thereof. R.S.O. 1950, c. 207, s. 43.

Exception as
to lands of
the Crown
not duly
surveyed
and laid
out

41. Nothing in sections 30 to 35 supports or maintains any claim to any profit or benefit to be taken or enjoyed from or upon any land of the Crown, or to any way or other easement, or to any water-course or the use of any water to be enjoyed or derived upon, over or from any land or water of the Crown, unless the land, way, easement, water-course or other matter lies and is situate within the limits of some town or township, or other parcel or tract of land duly surveyed and laid out by authority of the Crown. R.S.O. 1950, c. 207, s. 44.

PART II

TRUSTS AND TRUSTEES

Application
of Part II

42. This Part applies to a trust created by an instrument or an Act of the Legislature heretofore or hereafter executed or passed. R.S.O. 1950, c. 207, s. 45.

Interpre-
tation

43.—(1) In this section, "trustee" includes an executor, an administrator, a trustee whose trust arises by construction or implication of law as well as an express trustee, and a joint trustee.

Actions
against
trustees

(2) In an action against a trustee or a person claiming through him, except where the claim is founded upon a fraud or fraudulent breach of trust to which the trustee was party or privy, or is to recover trust property or the proceeds thereof, still retained by the trustee, or previously received by the trustee and converted to his use, the following paragraphs apply:

1. All rights and privileges conferred by any statute of limitations shall be enjoyed in the like manner and to the like extent as they would have been enjoyed in such action if the trustee or person claiming through him had not been a trustee or person claiming through a trustee.
2. If the action is brought to recover money or other property and is one to which no existing statute of limitations applies, the trustee or person claiming through him is entitled to the benefit of, and is at liberty to plead, the lapse of time as a bar to such action in the like manner and to the like extent as if the claim had been against him in an action of debt for money had and received; but so nevertheless that the statute shall run against a married woman entitled in possession for her separate use, whether with or without restraint upon anticipation, but shall not begin to run against any beneficiary unless and until the interest of such beneficiary becomes an interest in possession.

(3) No beneficiary, as against whom there would be a good defence by virtue of this section, shall derive any greater or other benefit from a judgment or order obtained by another beneficiary than he could have obtained if he had brought the action and this section had been pleaded. R.S.O. 1950, c. 207, s. 46.

44.—(1) Where land or rent is vested in a trustee upon an express trust, the right of the *cestui que trust* or a person claiming through him to bring an action against the trustee or a person claiming through him to recover the land or rent, shall be deemed to have first accrued, according to the meaning of this Act, at and not before the time at which the land or rent has been conveyed to a purchaser for a valuable consideration, and shall then be deemed to have accrued only as against such purchaser and any person claiming through him.

(2) Subject to section 43, no claim of a *cestui que trust* against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any statute of limitations. R.S.O. 1950, c. 207, s. 47.

PART III

PERSONAL ACTIONS

45.—(1) The following actions shall be commenced within and not after the times respectively hereinafter mentioned:

- (a) an action for rent, upon an indenture of demise,

(b) an action upon a bond, or other specialty, except upon a covenant contained in an indenture of mortgage made on or after the 1st day of July, 1894,

(c) an action upon a judgment or recognizance,

within twenty years after the cause of action arose;

(d) an action upon an award where the submission is not by specialty,

(e) an action for an escape,

(f) an action for money levied on execution, or

(g) an action for trespass to goods or land, simple contract or debt grounded upon any lending or contract without specialty, debt for arrears of rent, detinue, replevin or upon the case other than for slander,

within six years after the cause of action arose;

(h) an action for a penalty, damages, or a sum of money given by any statute to the Crown or the party aggrieved, within two years after the cause of action arose;

(i) an action upon the case for words, within two years after the words spoken;

(j) an action for assault, battery, wounding or imprisonment, within four years after the cause of action arose;

(k) an action upon a covenant contained in an indenture of mortgage or any other instrument made on or after the 1st day of July, 1894, to repay the whole or part of any moneys secured by a mortgage, within ten years after the cause of action arose or within ten years after the date upon which the person liable on the covenant conveyed or transferred his interest in the mortgaged lands, whichever is later in point of time;

(l) an action by a mortgagee against a grantee of the equity of redemption under section 18 of *The Mortgages Act*, within ten years after the cause of action arose;

(m) an action for a penalty imposed by any statute brought by any informer suing for himself alone, or for the Crown as well as himself, or by any person

authorized to sue for the same, not being the person aggrieved, within one year after the cause of action arose.

(2) Nothing in this section extends to any action where the time for bringing the action is by any statute specially limited. Where time specially limited
R.S.O. 1950, c. 207, s. 48.

46. Every action of account, or for not accounting, or for such accounts as concerns the trade of merchandise between merchant and merchant, their factors and servants, shall be commenced within six years after the cause of action arose, and no claim in respect of a matter that arose more than six years before the commencement of the action is enforceable by action by reason only of some other matter of claim comprised in the same account having arisen within six years next before the commencement of the action. R.S.O. 1950, c. 207, s. 49. Actions of account, etc.

47. Where a person entitled to bring an action mentioned in section 45 or 46 is at the time the cause of action accrues an infant, mental defective, mental incompetent or of unsound mind, the period within which the action may be brought shall be reckoned from the date when such person became of full age or of sound mind. R.S.O. 1950, c. 207, s. 50. In case of disability of plaintiff

48. If a person against whom a cause of action mentioned in section 45 or 46 accrues is at such time out of Ontario, the person entitled to the cause of action may bring the action within such times as are before limited after the return of the absent person to Ontario. R.S.O. 1950, c. 207, s. 51. Non-resident defendants

49.—(1) Where a person has any such cause of action against joint debtors or joint contractors, he is not entitled to any time within which to commence such action against any one of them who was in Ontario at the time the cause of action accrued, by reason only that some other of them was, at the time the cause of action accrued, out of Ontario. Where some joint debtors have been within and some without Ontario

(2) The person having such cause of action shall not be barred from commencing an action against a joint debtor or joint contractor who was out of Ontario at the time the cause of action accrued, after his return to Ontario, by reason only that judgment has been already recovered against a joint debtor or joint contractor who was at such time in Ontario. R.S.O. 1950, c. 207, s. 52. Effect of recovery against one joint debtor

50.—(1) Where an acknowledgment in writing, signed by the principal party or his agent, is made by a person liable upon an indenture, specialty, judgment or recognizance, or where an acknowledgment is made by such person by part payment, or part satisfaction, on account of any principal or interest due on the indenture, specialty, judgment or recognizance, the person Effect of written acknowledgment or part payment

entitled may bring an action for the money remaining unpaid and so acknowledged to be due, within twenty years, or, in the cases mentioned in clause *k* of subsection 1 of section 45, within ten years after the acknowledgment in writing, or part payment, or part satisfaction, or where the person entitled is, at the time of the acknowledgment, under disability as aforesaid, or the person making the acknowledgment is, at the time of making it, out of Ontario, then within twenty years, or in the cases aforesaid within ten years, after the disability has ceased, or the person has returned, as the case may be.

Application
of section

(2) In the case of an action upon a covenant contained in an indenture of mortgage made on or after the 1st day of July, 1939, or upon a covenant contained in an instrument made on or after the 1st day of July, 1939, to pay the whole or part of any moneys secured by a mortgage, this section does not apply to part payments on the mortgage made by a person other than the person liable on the covenant or to acknowledgments in writing signed by any person other than the person liable on the covenant. R.S.O. 1950, c. 207, s. 53.

Promise by
words only

51.—(1) No acknowledgment or promise by words only shall be deemed sufficient evidence of a new or continuing contract whereby to take out of the operation of this Part, any case falling within its provisions respecting actions,

(a) of account and upon the case;

(b) on simple contract or of debt grounded upon any lending or contract without specialty; and

(c) of debt for arrears of rent,

or to deprive any party of the benefit thereof, unless the acknowledgment or promise is made or contained by or in some writing signed by the party chargeable thereby, or by his agent duly authorized to make the acknowledgment or promise.

Effect of
payment of
principal or
interest

(2) Nothing in this section alters, takes away or lessens the effect of any payment of any principal or interest by any person. R.S.O. 1950, c. 207, s. 54.

Two or
more joint
contractors,
obligors,
covenantors,
or
executors

52. Where there are two or more joint debtors or joint contractors, or joint obligors, or covenantors, or executors or administrators of any debtor or contractor, no such joint debtor, joint contractor, joint obligor, or covenantor, or executor or administrator loses the benefit of this Act so as to be chargeable in respect or by reason only of any written acknowledgment or promise made and signed or by reason of any payment of any principal or interest made by any other or others of them. R.S.O. 1950, c. 207, s. 55.

53. In actions commenced against two or more such joint debtors, joint contractors, executors or administrators, if it appears at the trial or otherwise that the plaintiff, though barred by this Act, as to one or more of such joint debtors, joint contractors, or executors or administrators is nevertheless entitled to recover against any other or others of the defendants by virtue of a new acknowledgment, promise or payment, judgment shall be given for the plaintiff as to the defendant or defendants against whom he recovers, and for the other defendant or defendants against the plaintiff. R.S.O. 1950, c. 207, s. 56.

54. No endorsement or memorandum of any payment written or made upon a promissory note, bill of exchange or other writing, by or on behalf of the person to whom the payment has been made, shall be deemed sufficient proof of the payment, so as to take the case out of the operation of this Act. R.S.O. 1950, c. 207, s. 57.

55. This Part applies to the case of any claim of the nature hereinbefore mentioned, alleged by way of set-off on the part of any defendant. R.S.O. 1950, c. 207, s. 58.

APPENDIX C

THE UNIFORM LIMITATIONS ACT

Recommended by the Conference of
Commissioners on Uniformity of Legislation in Canada

(Recommended 1931, amended 1932, 1944)

1. This Act may be cited as "*The Limitation of Actions*" ^{Short title}
Act, 19 . . .".
2. In this Act, unless the context otherwise requires: <sup>Interpreta-
tion</sup>
- (a) "action" means any civil proceeding, including any ^{"Action"}
civil proceeding by or against the Crown;
 - (b) "assurance" means any transfer, deed or instru- ^{"Assurance"}
ment, other than a will, by which land may be con-
veyed or transferred;
 - (c) "disability" means disability arising from infancy ^{"Disability"}
or unsoundness of mind;
 - (d) "heirs" includes the persons entitled beneficially to ^{"Heirs"}
the real estate of a deceased intestate;
 - (e) "land" includes all corporeal hereditaments, and ^{"Land"}
any share or any freehold or leasehold estate or any
interest in any of them;
 - (f) "mortgage" includes charge, "mortgagor" includes ^{"Mortgage"}
chargor, and "mortgagee" includes chargee;
 - (g) "proceedings" includes action, entry, taking of pos- <sup>"proceed-
ings"</sup>
session, distress and sale proceedings under an
order of a court or under a power of sale contained
in a mortgage or conferred by statute;
 - (h) "rent" means a rent service or rent reserved upon ^{"Rent"}
a demise; and
 - (i) "rent charge" includes all annuities and periodical <sup>"Rent
charge"</sup>
sums of money charged upon or payable out of land.

PART I

General

3.—(1) The following actions shall be commenced within and not after the times respectively hereinafter mentioned:

(a) actions for penalties imposed by any statute brought by

(i) any informer suing for himself alone or for the Crown as well as for himself, or

(ii) any person authorized to sue for the same, not being the person aggrieved,

within one year after the cause of action arose;

(b) actions for penalties, damages or sums of money in the nature of penalties, damages or sums of money in the nature of penalties given by any statute

(i) to the Crown or the person aggrieved, or

(ii) partly to one and partly to the other,

within two years after the cause of action arose;

(c) actions of defamation, whether libel or slander,

(i) within two years of the publication of the libel or the speaking of the slanderous words, or

(ii) where special damage is the gist of the action, within two years after the occurrence of such damage;

(d) actions for

(i) trespass to the person, assault, battery, wounding or other injury to the person, whether arising from an unlawful act or from negligence, or

(ii) false imprisonment, or

(iii) malicious prosecution, or

(iv) seduction,

within two years after the cause of action arose;

(e) actions for

- (i) trespass or injury to real property or chattels, whether direct or indirect, and whether arising from an unlawful act or from negligence, or
- (ii) for the taking away, conversion or detention of chattels,

within six years after the cause of action arose;

(f) actions for

- (i) the recovery of money (except in respect of a debt charged upon land), whether recoverable as a debt or damages or otherwise, and whether on a recognizance, bond, covenant or other specialty or on a simple contract, express or implied, and
- (ii) an account or for not accounting,

within six years after the cause of action arose;

(g) actions grounded on fraudulent misrepresentation, within six years from the discovery of the fraud;

(h) actions grounded on accident, mistake or other equitable ground of relief not hereinbefore specifically dealt with, within six years from the discovery of the cause of action;

(i) actions on a judgment or order for the payment of money, within ten years after the cause of action thereon arose; and

(NOTE: *In the Statutes of Manitoba, 1931, c. 30, the following words have been added to the clause corresponding with clause (i): "but no such action shall be brought upon a judgment or order recovered upon any previous judgment or order."*)

(j) any other action not in this Act or any other Act specifically provided for, within six years after the cause of action arose.

(2) Nothing in this section extends to any action where the time for bringing the action is by statute specifically limited.

4. When the existence of a cause of action has been concealed by the fraud of the person setting up this Part or Part II as a defence, the cause of action shall be deemed to have arisen when the fraud was first known or discovered. ^{Concealment by fraud}

Independent
periods for
account
items

5. No claim in respect of an item in an account that arose more than six years before the commencement of the action is enforceable by action by reason only of some other claim in respect of another item in the same account having arisen within six years next before the commencement of the action.

Claimant
under
disability

6. If a person entitled to bring any action mentioned in paragraphs (c) to (i) inclusive of subsection (1) of section 3 is under disability at the time the cause of action arises, he may bring the action

- (a) within the time hereinbefore limited with respect to such action, or
- (b) at any time within two years after he first ceased to be under disability.

Promises,
acknowledg-
ments and
payments

7.—(1) Where a person who is or, but for the effluxion of time, would be liable to an action on a judgment or on an order for the payment of money or for the recovery of money as a debt, or his agent in that behalf,

- (a) conditionally or unconditionally promises his creditor or the agent of the creditor in writing signed by the debtor or his agent to pay the judgment or order for payment or debt;
- (b) gives a written acknowledgment of the judgment or order for payment or debt signed by the debtor or his agent to his creditor or the agent of the creditor; or
- (c) makes a part payment on account of the principal of the judgment or order for payment or debt or interest thereon to his creditor or the agent of the creditors

then, subject to paragraph (i) of subsection (1) of section 3, the action may be brought within six years from the date of the promise, acknowledgment or part payment, as the case may be, notwithstanding that the action would otherwise be barred under the provisions of this Act.

(2) A written acknowledgment of a judgment or order for payment or debt or a part payment on account of the principal of the judgment or order for payment or debt or interest thereon, has full effect

- (a) whether or not a promise to pay can be implied therefrom, and
- (b) whether or not it is accompanied by a refusal to pay.

8. Where there are two or moreJoint
obligations

- (a) joint debtors, joint contractors, joint obligors or joint covenantors, or
- (b) executors or administrators of any debtor, contractor, obligor or covenantor,

no such joint debtor, joint contractor, joint obligor or joint covenantor, or executor or administrator loses the benefit of this Act so as to be chargeable in respect or by reason only of any written acknowledgment or promise made and signed, or by reason of any payment of any principal or interest made, by any other or others of them.

9. In actions commenced against two or more such joint debtors, joint contractors, joint obligors or joint covenantors, or executors or administrators, if it appears at the trial or otherwise that the plaintiff, though barred by this Act, as to one or more of such joint debtors, joint contractors, joint obligors or joint covenantors, or executors or administrators, is nevertheless entitled to recover against any other or others of the defendants by virtue of a new acknowledgment, promise or payment, judgment shall be given for the plaintiff as to the defendant or defendants against whom he is entitled to recover, and for the other defendant or defendants against the plaintiff.

Actions
against
joint
debtors

10. No endorsement or memorandum of any payment written or made upon any promissory note, bill of exchange or other writing, by or on behalf of the person to whom the payment has been made, shall be deemed sufficient proof of the payment so as to take the case out of the operation of this Act.

Endorse-
ments by
payees

11. This Part applies to the case of any claim of the nature hereinbefore mentioned, alleged by way of counter-claim or set-off on the part of any defendant.

Counter-
claims

PART II

Charges on Land, Etc.

12.—(1) No proceedings shall be taken to recover

Proceedings
to recover
money

- (a) any rent charge, or
- (b) any sum of money
 - (i) secured by any mortgage, or
 - (ii) otherwise charged upon or payable out of any land or rent charge

but within ten years next after a present right to recover the same accrued to some person capable of giving a discharge therefor or a release thereof, unless prior to the expiry of such ten years

- (c) some part of the rent charge or sum of money or some interest thereon has been paid by a person bound or entitled to make a payment thereof, or his agent in that behalf, to a person entitled to receive the same, or his agent, or
- (d) some acknowledgment in writing of the right to such rent charge or sum of money signed by any person so bound or entitled, or his agent in that behalf, has been given to a person entitled to receive the same, or his agent,

and in such case no action shall be brought but within ten years after such payment or acknowledgment, or the last of such payments or acknowledgments, if more than one was made or given.

(2) In the case of a reversionary interest in land, no right to recover the sum of money charged thereon shall be deemed to accrue until the interest has fallen into possession.

(3) *(If it is intended to limit charges created by writs of execution, a special clause should be inserted here which would probably vary in different jurisdictions).*

Money
under
agreement
for sale

13. No proceedings shall be taken to recover any sum of money payable under an agreement for the sale of land but within ten years after a present right to recover the same accrued to some person entitled to receive the same, or capable of giving a release thereof, unless prior to the expiry of such ten years

- (a) some part of the sum of money or some interest thereon has been paid by a person bound or entitled to make a payment thereof or his agent in that behalf to a person entitled to receive the same or his agent, or
- (b) some acknowledgment in writing of the right to receive such sum of money signed by any person so bound or entitled or his agent in that behalf has been given to a person entitled to receive the same or his agent,

and in such case no action shall be brought but within ten years after such payment or acknowledgment, or the last of such payments or acknowledgments, if more than one was made or given.

14.—(1) No arrears of rent, or of interest in respect of ^{Arrears of rent} any sum of money to which section 12 applies or any damages in respect of such arrears shall be recovered by any proceeding, but within six years, next after a present right to recover the same accrued to some person capable of giving a discharge therefor or a release thereof unless, prior to the expiry of such six years,

- (a) some part of the arrears has been paid by a person bound or entitled to make a payment thereof or his agent in that behalf to a person entitled to receive the same or his agent, or
- (b) some acknowledgment in writing of the right to the arrears signed by a person so bound or entitled or his agent in that behalf has been given to a person entitled to receive the arrears or his agent,

and in such case no proceeding shall be taken but within six years after such payment or acknowledgment, or the last of such payments or acknowledgments, if more than one was made or given.

(2) Subsection (1) does not apply to an action for redemption or similar proceedings brought by a mortgagor or by any person claiming under him.

15. Where any prior mortgagee has been in possession ^{Subsequent mortgagee} of any land within one year next before an action is brought by any person entitled to a subsequent mortgage on the same land, the person entitled to the subsequent mortgage may recover in such action the arrears of interest that have become due during the whole time the prior mortgagee was in such possession or receipt, although that time may have exceeded such term of six years.

PART III

Land

General Principle

16. No person shall take proceedings to recover any land ^{Recovery of land} but

- (a) within ten years next after the time at which the right to do so first accrued to some person through whom he claims (hereinafter called "predecessor"), or
- (b) if such right did not accrue to a predecessor then within ten years next after the time at which such right first accrued to the person taking the proceedings (hereinafter called "claimant").

Special Cases

Dispossession of claimant

17. Where the claimant or a predecessor

- (a) has in respect of the estate or interest claimed been in possession of the land or in receipt of the profits thereof, and
- (b) has while entitled thereto
 - (i) been dispossessed, or
 - (ii) discontinued such possession or receipt

the right to take proceedings to recover the land shall be deemed to have first accrued at the time of such dispossession or discontinuance of possession or at the last time at which any such profits were so received.

Recovery of land by claimant of interest of deceased person

18. Where the claimant claims the estate or interest of a deceased predecessor who was

- (a) in possession of the land or in receipt of the profits thereof in respect of the same estate or interest at the time of his death, and
- (b) the last person entitled to such estate or interest who was in such possession or receipt

the right to take proceedings to recover the land shall be deemed to have first accrued at the time of the death of the predecessor.

Alienation

19. Where the claimant claims in respect of an estate or interest in possession, granted, appointed or otherwise assured to him or a predecessor by a person being in respect of the same estate or interest in the possession of the land or in receipt of the profits thereof and no person entitled under the assurance has been in such possession or receipt the right to take proceedings to recover the land shall be deemed to have first accrued at the time at which the claimant or his predecessor became entitled to such possession or receipt by virtue of the assurance.

Forfeiture

20. Where the claimant or the predecessor becomes entitled by reason of forfeiture or breach of condition, then the right to take proceedings to recover the land shall be deemed to have first accrued whenever the forfeiture was incurred or the condition was broken.

*Future Estates***21. Where**Owner of
particular
estate

- (a) the estate or interest claimed has been
 - (i) an estate or interest in reversion or remainder,
or
 - (ii) some other future estate or interest, including
therein an executory devise,

and

- (b) no person has obtained the possession of the land
or is in receipt of the profits thereof in respect of
such estate or interest,

the right to take proceedings to recover the land shall be deemed to have first accrued at the time at which the estate or interest became an estate or interest in possession, by the determination of any estate or estates in respect of which the land has been held or the profits thereof have been received notwithstanding the claimant or the predecessor has at any time previously to the creation of the estate or estates which has determined been in the possession of the land or in receipt of the profits thereof.

22. If the person last entitled to any particular estate on which any future estate or interest was expectant was not in possession of the land or in receipt of the profits thereof at the time when his interest determined, no proceedings to recover the land shall be taken by any person becoming entitled in possession to a future estate or interest but

Owner of
particular
estate
out of
possession

- (a) within ten years next after the time when the right to take proceedings first accrued to the person whose interest has so determined, or
- (b) within five years next after the time when the estate of the person becoming entitled in possession has become vested in possession,

whichever of these two periods is the longer.

23. If the right to take proceedings to recover the land has been barred, no proceedings shall be taken by any person afterwards claiming to be entitled to the same land in respect of any subsequent estate or interest under any will or assurance executed or taking effect after the time when a right to take proceedings first accrued to the owner of the particular estate whose interest has so determined.

Settlement
while
statute is
running

Successive
estates
in same
person

24. When

- (a) the right of any person to take proceedings to recover any land to which he may have been entitled for an estate or interest in possession entitling him to take proceedings has been barred by the determination of the period which is applicable in such case, and
- (b) such person has at any time during the said period been entitled to any other estate, interest, right or possibility in reversion, remainder or otherwise in or to the same land

no proceedings shall be taken by him or any person claiming through him to recover the land in respect of such other estate, interest, right or possibility, unless in the meantime the land has been recovered by some person entitled to an estate, interest or right which has been limited or taken effect after or in defeasance of the estate or interest in possession.

Accrual of
right on
forfeiture
action

25. When

- (a) the right to take proceedings to recover any land first accrued to a claimant or a predecessor by reason of any forfeiture or breach of condition, in respect of an estate or interest in reversion or remainder and
- (b) the land has not been recovered by virtue of such right,

the right to take proceedings shall be deemed to have first accrued at the time when the estate or interest became an estate or interest in possession.

Landlord and Tenant

Wrongful
receipt
of rent

26. Where

- (a) any person is in possession of any land, or in receipt of the profits thereof by virtue of a lease in writing, by which a rent amounting to the yearly sum or value of four dollars or upwards is reserved, and
- (b) the rent reserved by such lease has been received by some person wrongfully claiming to be entitled to the land in reversion immediately expectant on the determination of the lease, and
- (c) no payment in respect of the rent reserved by the lease has afterwards been made to the person rightfully entitled thereto,

the right of the claimant or his predecessor to take proceedings to recover the land after the determination of the lease, shall be deemed to have first accrued at the time at which the rent reserved by the lease was first so received by the person wrongfully claiming as aforesaid and no such right shall be deemed to have first accrued upon the determination of the lease to the person rightfully entitled.

27. Where any person is in possession of any land or in receipt of the profits thereof as tenant from year to year, or other period, without any lease in writing, the right of the claimant or his predecessor to take proceedings to recover the land shall be deemed to have first accrued,

- (a) at the determination of the first of such years or other periods, or
- (b) at the last time (prior to his right to take proceedings being barred under any other provisions of this Act) when any rent payable in respect of such tenancy was received by the claimant or his predecessor or the agent of either

whichever last happens.

28.—(1) Where any person is in possession of any land or in receipt of the profits thereof as tenant at will, the right of the claimant or his predecessor to take proceedings to recover the land shall be deemed to have first accrued either

- (a) at the determination of the tenancy, or
- (b) at the expiration of one year next after its commencement,

at which time, if the tenant was then in possession, the tenancy shall be deemed to have been determined.

(2) No mortgagor or *cestui que trust* under an express trust shall be deemed to be a tenant at will to his mortgagee or trustee within the meaning of this section.

29.—(1) In every case of concealed fraud on the part of

- (a) the person setting up this Part as a defence, or
- (b) some other person through whom such first mentioned person claims,

the right of any person to bring an action for the recovery of any land of which he or any person through whom he claims may have been deprived by the fraud, shall be deemed to have first accrued at and not before the time at which the

fraud was or with reasonable diligence might have been first known or discovered.

(2) Nothing in subsection (1) enables an owner of land to bring an action for the recovery of the land, or for setting aside any conveyance thereof, on account of fraud against any purchaser in good faith for valuable consideration, who

(a) has not assisted in the commission of such fraud, and

(b) at the time that he made the purchase, did not know, and had no reason to believe, that any such fraud had been committed.

Acknowledgments of title

30. When any acknowledgment in writing of the title of a person entitled to any land signed by the person in possession of the land or in receipt of the profits thereof or his agent in that behalf has been given to him or his agent prior to his right to take proceedings to recover the land having been barred under the provisions of this Act, then

(a) the possession or receipt of or by the person by whom the acknowledgment was given shall be deemed, according to the meaning of this Act, to have been the possession or receipt of or by the person to whom or to whose agent such acknowledgment was given at the time of giving the same, and

(b) the right of the last mentioned person, or of any person claiming through him, to take proceedings shall be deemed to have first accrued at and not before the time at which the acknowledgment, or the last of the acknowledgments, if more than one, was given.

(NOTE: *In any province in which there are now in force limitation provisions relating to dower and estates tail (see, e.g. R.S.O. 1927, c. 106, ss. 25-30), the appropriate provisions may be added here, in Part III).*

PART IV

Mortgages of Real and Personal Property

Redemption

31.—(1) When a mortgagee or a person claiming through a mortgagee

(a) has obtained the possession of any property real or personal comprised in a mortgage, or

(b) is in receipt of the profits of any land therein comprised

the mortgagor or any person claiming through him shall not bring any action to redeem the mortgage but within ten years next after the time at which the mortgagee or a person claiming through the mortgagee obtained such possession or first received any such profits unless prior to the expiry of such ten years an acknowledgment in writing of the title of the mortgagor or of his right to redeem is given to the mortgagor or mortgagors are entitled to redeem the same divided part of the property on payment with interest of the part of the mortgage money which bears the same proportion to the whole of the mortgage money as the value of the divided part of the property bears to the value of the whole of the property comprised in the mortgage.

32. No mortgagee or person claiming through a mortgagee shall take any proceedings for foreclosure or sale under any mortgage of real or personal property or to recover the property mortgaged but Actions by mortgagees for foreclosure or sale

- (a) within ten years next after the right to take the proceedings first accrued to the mortgagee, or
- (b) if the right did not accrue to the mortgagee, then within ten years after the right first accrued to a person claiming through the mortgagee.

33. When any person bound or entitled to make payment of the principal money or interest secured by a mortgage of property real or personal or his agent in that behalf, at any time prior to the expiry of ten years from the accrual of the right to take proceedings for foreclosure or sale or to take proceedings to recover the property, pays any part of such money or interest to a person entitled to receive the same, or his agent, the right to take proceedings shall be deemed to have first accrued Accrual of right of action

- (a) at (and not before) the time at which the payment or the last of the payments, if more than one, was made, or
- (b) if any acknowledgment of the nature described in section 30 was given at any time prior to the expiry of ten years from the accrual of the right to take proceedings, then at the time at which the acknowledgment or the last of the acknowledgments, if more than one, was given.

PART V

Agreements for the Sale of Land

34.—(1) No purchaser of land or any person claiming through him shall bring any action in respect of the agreement for the sale thereof but Actions by purchasers under agreements

- (a) within ten years after the right to bring the action first accrued to the purchaser, or
- (b) if the right did not accrue to the purchaser, then within ten years after the right first accrued to a person claiming through the purchaser.

(2) When, at any time prior to the expiry of ten years from the accrual of the right to bring an action in respect of an agreement for sale of land,

- (a) any person bound or entitled to make payment of the purchase money or his agent in that behalf, pays any part of the money payable under the agreement of sale to a person entitled to receive the same, or his agent, or
- (b) any acknowledgment in writing of the right of the purchaser or person claiming through him to the land, or to make such payment, was given to the purchaser or person claiming through him or to the agent of such purchaser or person signed by the vendor or the person claiming through him or the agent in that behalf of either of them,

then the right to take proceedings shall be deemed to have first accrued at (and not before) the time at which the payment or the last of the payments, if more than one, was made, or the time at which the acknowledgment or the last of the acknowledgments, if more than one, was given.

Actions by
vendors

35. No vendor of land or person claiming through him shall take any proceedings

- (a) for cancellation, determination or rescission of the agreement for the sale of the land,
- (b) for foreclosure or sale thereunder, or
- (c) to recover the land

but within ten years after the right to take the proceedings first accrued to the vendor, or if the right did not accrue to the vendor, then within ten years after the right first accrued to a person claiming through the vendor.

Accrual of
right of
action

36. When, at any time prior to the expiry of ten years from the accrual of the right to take the proceedings mentioned in section 35,

- (a) any person bound or entitled to make payment of the purchase money or his agent in that behalf, pays any part of the money payable under the agree-

ment of sale to a person entitled to receive the same, or his agent, or

- (b) any acknowledgment in writing of the right of the vendor or person claiming through him to the land or to receive the payment was given to the vendor or person claiming through him or to the agent of such vendor or person signed by the purchaser or the person claiming through him or the agent in that behalf of either of them,

then the right to take proceedings shall be deemed to have first accrued at (and not before) the time at which the payment or last of the payments, if more than one, was made, or the time at which the acknowledgment or last of the acknowledgments, if more than one was given.

PART VI

Conditional Sales of Goods

37. In this Part, unless the context otherwise requires, Interpreta-
tion

- (a) "buyer" means the person who buys or hires goods by a conditional sale; "Buyer"

- (b) "conditional sale" means "Conditional
sale"

- (i) any contract for the sale of goods under which

- (A) possession is or is to be delivered to the buyer, and

- (B) the property in the goods is to vest in him at a subsequent time upon payment of the whole or part of the price or the performance of any other condition; or

- (ii) any contract for the hiring of goods by which it is agreed that the hirer shall become, or have the option of becoming, the owner of the goods upon full compliance with the terms of the contract;

- (c) "goods" means all chattels personal other than things in action or money, and includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale, or under the contract of sale; and "Goods"

- (d) "seller" means the person who sells or lets to hire goods by a conditional sale. "Seller"

Action for
sale or
recovery
of goods

38. No seller shall take any proceedings for the sale of or to recover any goods the subject of a conditional sale but

- (a) within ten years after the right to take the proceedings first accrued to the seller, or
- (b) if the right did not accrue to the seller, then within ten years after the right first accrued to a person claiming through him.

Accrual of
right of
action

39. When, at any time prior to the expiry of ten years from the accrual of the right to take the proceedings,

- (a) any person bound or entitled to make payment of the price, or his agent in that behalf, pays any part of the price or interest to a person entitled to receive the same, or his agent, or
- (b) any acknowledgment in writing of the right of the seller or person claiming through him to the goods or to receive the payment was given to the seller or person claiming through him signed by the buyer or the person claiming through him or the agent in that behalf of either of them,

then the right to take proceedings shall be deemed to have first accrued at (and not before) the time at which the payment or last of the payments, if more than one, was made, or the time at which the acknowledgment or last of the acknowledgments, if more than one, was given.

PART VII

Trusts and Trustees

Trustee
defined

40.—(1) In this section “trustee” includes an executor, an administrator and trustee whose trust arises by construction or implication of law as well as an express trustee and also includes a joint trustee.

Exceptions

(2) No period of limitation prescribed by this Act applies to an action by a beneficiary under a trust, being an action

- (a) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or
- (b) to recover from the trustee trust property or the proceeds thereof in the possession of the trustee, or previously received by the trustee and converted to his use.

Actions
against
trustee

(3) Subject to subsection (1), an action by a beneficiary to recover trust property or in respect of any breach of trust, not being an action for which a period of limitation is prescribed by any other provision of this Act, shall not be brought

after the expiration of six years from the date on which the right of action accrued, but the right of action shall be deemed not to have accrued to any beneficiary entitled to a future interest in the trust property, until the interest falls into possession.

(4) No beneficiary as against whom there would be a good defence under this Act shall derive any greater or other benefit from a judgment or order obtained by any other beneficiary than he could have obtained if he had brought the action and this Act had been pleaded in defence.

41. Subject to the provisions of subsection (2) of section 40, Action for personal estate

- (a) no action in respect of any claim to the personal estate of a deceased person or to any share or interest in such estate, whether under a will or an intestacy, shall be brought after the expiration of ten years from the date when the right to receive the share or interest accrued, and
- (b) no action to recover arrears of interest in respect of any legacy, or damages in respect of such arrears, shall be brought after the expiration of six years from the date on which the interest became due.

42.—(1) Where any property is vested in a trustee upon any express trust, the right of the *cestui que trust* or any person claiming through him to bring an action against the trustee or any person claiming through him to recover the property, shall be deemed to have first accrued at and not before the time at which it was conveyed to a purchaser for a valuable consideration, and shall then be deemed to have accrued only as against such purchaser and any person claiming through him. Accrual of recovery rights by cestui que trust

(2) No action shall be brought to recover

- (a) any sum of money or legacy charged upon or payable out of any land or rent charge, though secured by an express trust, or
- (b) any arrears of rent or of interest in respect of any sum of money or legacy so charged or payable or so secured, or
- (c) any damages in respect of such arrears, except within the time within which the same would be recoverable if there were not any such trust.

(3) Subsection (2) does not operate so as to affect any claim of a *cestui que trust* against his trustee for property held on an express trust.

PART VIII

General

Possession

43.—(1) No person shall be deemed to have been in possession of any land, within the meaning of this Act, merely by reason of having made an entry thereon.

Claims

(2) No continual or other claim upon or near any land preserves any right of making an entry or distress or bringing an action.

Profits

(3) The receipt of the rent payable by any tenant at will, tenant from year to year or other lessee, shall, as against such lessee or any person claiming under him, but subject to the lease, be deemed to be the receipt of the profits of the land for the purposes of this Act.

Expiry of
statutory
period

44. At the determination of the period limited by this Act to any person for taking proceedings to recover any land, rent charge or money charged on land, the right and title of such person to the land, or rent charge or the recovery of the money out of the land is extinguished.

Conversion
or wrongful
detention

45.—(1) Where any cause of action in respect of the conversion or wrongful detention of a chattel has accrued to any person, and before he recovers possession of the chattel, a further conversion or wrongful detention takes place, no action shall be brought in respect of the further conversion or detention after the expiration of six years from the accrual of the cause of action in respect of the original conversion or detention.

(2) Where

- (a) any such cause of action has accrued to any person, and
- (b) the period prescribed for bringing that action and for bringing any action in respect of such a further conversion or wrongful detention as aforesaid has expired, and
- (c) he has not during that period recovered possession of the chattel

the title of that person to the chattel is extinguished.

Title of
adminis-
trator

46. For the purposes of Parts II, III and IV, an administrator claiming the estate or interest of the deceased person of whose property he has been appointed administrator, shall be deemed to claim as if there had been no interval of time between the death of such deceased person and the grant of the letters of administration.

47.—(1) If at the time at which the right to take any proceedings referred to in Parts II, III or IV first accrued to any person he was under disability, then such person or a person claiming through him may (notwithstanding anything in this Act) take proceedings at any time within six years next after the person to whom the right first accrued first ceased to be under disability or died, whichever event first happened, except that if he died without ceasing to be under disability, no further time to take proceedings shall be allowed, by reason of the disability of any other person. ^{Disabilities}

(2) Notwithstanding anything in this section, no proceedings shall be taken by a person under disability at the time the right to do so first accrued to him or by any person claiming through him, but within thirty years next after that time.

48. In respect of a cause of action as to which the time for taking proceedings is limited by this Act other than those mentioned in paragraphs (a) and (b) of subsection 1 of section 3, if a person is out of the province at the time a cause of action against him arises within the province, the person entitled to the action may bring the same within two years after the return of the first mentioned person to the province or within the time otherwise limited by this Act for bringing the action. ^{Defendant out of Province}

49.—(1) Where a person has any cause of action against joint debtors, joint contractors, joint obligors or joint covenantors, he is not entitled to any time within which to commence such action against such of them as were within the province at the time the cause of action accrued by reason only that one or more of them was at such time out of the province. ^{Joint debtors}

(2) A person having such cause of action is not barred from commencing an action against any joint debtor, joint contractor, joint obligor or joint covenantor who was out of the province at the time the cause of action accrued, after his return to the province by reason only that judgment has been already recovered against such of the joint debtors, joint contractors, joint obligors or joint covenantors as were at such time within the province.

50. The provisions of this Act apply to all causes of action whether the same arose before or after the coming into force of this Act, except that no action shall be barred merely by its operation until the expiry of six months from its coming into force, but all actions that would have been barred by effluxion of time during such six months under the provisions of the law existing immediately prior to the coming into force of this Act, shall be barred as if such law were still existing. ^{Application of Act}

Rules of
equity

51. Nothing in this Act interferes with any rule of equity in refusing relief on the ground of acquiescence, or otherwise, to any person whose right to bring an action is not barred by virtue of this Act.

APPENDIX D

THE 1966 ALBERTA AMENDMENTS

An Act to amend the Law respecting Limitations of Actions in Tort

Statutes of Alberta, 1966

CHAPTER 49

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

1. *The Limitation of Actions Act* is hereby amended. R.S.A.
1955, c. 177
2. Section 5, subsection (1) is amended by striking out Amends s. 5 clauses (c), (d) and (e).
3. The following Part is added after section 50: Enacts
Part IX

PART IX

TORT AND RELATED ACTIONS

51. Except as otherwise provided in this Part, an action Commence-
ment of
action
for

- (a) defamation, or
- (b) trespass to the person, assault, battery, wounding or other injury to the person, whether arising from an unlawful act or from negligence or from breach of a statutory duty, or
- (c) false imprisonment, or
- (d) malicious prosecution, or
- (e) seduction, or
- (f) trespass or injury to real property or chattels, whether direct or indirect and whether arising from an unlawful act or from negligence or from breach of a statutory duty, or
- (g) the taking away, conversion or detention of chattels,

may be commenced within two years after the cause of action arose, and not afterwards.

Application
of Part

52. This Part applies to every action in which the damages claimed consist of or include damages in respect of injury to the person, whether the action is or may be founded on tort, breach of contract or breach of statutory duty.

Action under
Trustee Act

53. Except as provided in sections 57 to 61, an action that may be maintained after the death of a person, as provided in section 32 or 33 of *The Trustee Act*, may be commenced within two years from the date of the death of the person, and not afterwards.

Action under
*Fatal
Accidents
Act*

54. Except as provided in sections 57 to 61, an action under *The Fatal Accidents Act* may be commenced within two years after the death of the person whose death gave rise to the cause of action under *The Fatal Accidents Act*, and not afterwards.

Actions
against
professional
practitioners

55. Except as provided in sections 57 to 61, an action against

- (a) a duly qualified medical practitioner registered under *The Medical Profession Act*, or
- (b) a dentist registered under *The Dental Association Act*, or
- (c) a chiropractor registered under *The Chiropractic Profession Act*, or
- (d) a naturopath registered under *The Naturopathy Act*,

for negligence or malpractice by reason of professional services requested or rendered may be commenced within one year from the date when the professional service terminated in respect of the matter that is the subject of the complaint, and not afterwards.

Action
against
hospitals

56. Except as provided in sections 57 to 61, an action against an approved hospital within the meaning of *The Alberta Hospitals Act* in respect of negligence in providing a service in that hospital may be commenced within one year after the cause of action arose, and not afterwards.

Fraudulent
concealment

57. Where the existence of a cause of action to which this Part applies has been concealed by the fraud of the person setting up this Part as a defence, the cause of action shall for the purposes of this Part be deemed to have arisen when the fraud was first known or discovered.

Defendant
out of
Province

58. Where a cause of action to which this Part applies arises within the Province against a person who is out of the Province at the time it arises, the person entitled to the action may commence the action within two years after the return of the first mentioned person to the Province.

59.—(1) Where a person entitled to bring an action to which this Part applies is under disability at the time the cause of action arises, he may commence the action at any time within two years from the date he ceased to be under disability.

(2) Subsection (1) does not apply

- (a) where the person under disability is an infant in the actual custody of a parent or guardian, or
- (b) where the person under disability is a mentally incapacitated person whose affairs are in the custody of a committee or of the Public Trustee.

60.—(1) Where an action to which this Part applies has been commenced, the lapse of time limited by this Part for bringing an action is no bar to

- (a) proceedings by counterclaim, including the adding of a new party as a defendant by counterclaim, or
- (b) third party proceedings,

with respect to any claims relating to or connected with the subject matter of the action.

(2) Subsection (1) does not operate so as to enable one person to make a claim against another person when a claim by that other person

- (a) against the first mentioned person, and
- (b) relating to or connected with the subject matter of the action,

is or will be defeated by the pleading of any provision of this Part as a defence by the first mentioned person.

61.—(1) Where an action to which this Part applies has been commenced within the time allowed by or under this Part, the court, upon application, may authorize an amendment to any pleading or proceeding therein that will result in a change of parties to the action:

- (a) where the action is one against the registered owner of a motor vehicle alleged to have occasioned the damages sustained and thereafter the plaintiff learns that the registered owner was not the actual owner of the vehicle at the time the damages were sustained, if the court is satisfied that there was sufficient and reasonable excuse for the failure of the plaintiff to learn of the existence of the actual owner and if the change is only the substitution of the actual owner;

- (b) where the action is one on behalf of a person under disability or the estate of a deceased person and the action was brought by or in the name of a person not entitled under law to bring an action on behalf of the person under disability or the estate of the deceased person, if the court is satisfied that no affected person has been misled as to the true nature of the action and if the change is only the substitution of the proper persons to bring the action;
- (c) where the action is one brought against a person who was in fact deceased at the time the action was commenced against him, if the court is satisfied that the action is one which under *The Trustee Act* could, at the time, have been maintained against the estate of the deceased person and if the change is only the substitution of the estate of the deceased person;

notwithstanding that the time limited by this Part for commencing that class of action had lapsed between the time the action was commenced and the time of the application for the amendment.

(2) An amendment authorized under subsection (1) may only be made within three months after the authorization is granted.

Repeals
R.S.A.
1955, c. 262

4.—(1) *The Public Officers Protection Act* is repealed.

Amends
R.S.A.
1955, c. 356

(2) *The Vehicles and Highway Traffic Act* is amended by striking out section 131.

Amends
1964, c. 56

(3) *The Motor Vehicle Accident Claims Act* is amended as to section 11

(a) by striking out subsection (2) and by substituting the following:

(2) An action under subsection (1) against the Administrator may be commenced only within the time limited by *The Limitation of Actions Act* for bringing an action against the owner or operator of the vehicle.

(b) by striking out of subsection (6) the words “section 131 of *The Vehicles and Highway Traffic Act*,” and by substituting the words “*The Limitation of Actions Act*,”.

Amends
R.S.A.
1955, c. 111

(4) *The Fatal Accidents Act* is amended

(a) as to section 4, subsection (2) by striking out the words “six calendar months” and by substituting the words “one year”,

- (b) as to section 5 by striking out the words "and no such action shall be commenced except within twelve months after the death of the injured person".

(5) *The Trustee Act* is amended

Amends
R.S.A.
1955, c. 346

- (a) as to section 32 by striking out subsection (3),

- (b) as to section 33 by striking out subsection (2).

(6) *The Alberta Architects Act* is amended by striking out section 29.

Amends
R.S.A.
1955, c. 16

(7) *The Defamation Act* is amended by striking out section 15.

Amends
R.S.A.
1955, c. 78

(8) *The Medical Profession Act* is amended by striking out section 62.

Amends
R.S.A.
1955, c. 198

(9) *The Dental Association Act* is amended by striking out section 46.

Amends
R.S.A.
1955, c. 82

(10) *The Naturopathy Act* is amended by striking out section 13.

Amends
R.S.A.
1955, c. 221

(11) *The Chiropractic Profession Act* is amended by striking out section 17.

Amends
R.S.A.
1966, c. 14

(12) *The City Act* is amended

Amends
R.S.A.
1955, c. 42

- (a) by striking out section 453,

- (b) as to section 694 by striking out subsection (3),

- (c) as to section 695

- (i) by striking out of subsection (1) the words
"and any action for damages brought in respect thereof shall be commenced within one year after such right of action has arisen, otherwise the right of action is barred and extinguished",

- (ii) by striking out of subsection (3) the words "or action brought against",

- (d) by striking out section 698 and by substituting the following:

698. No action shall be commenced against a city, ^{Notice to} its officials, employees or agents for the recovery of damages occasioned by default in the city's duty of repair referred to in section 293, whether the want of repair was the result of non-feasance or misfeasance, unless notice _{city of claim}

in writing of the claim and of the injury complained of has been served upon or sent by registered post to the city clerk within sixty days after the happening of the injury.

Amends
R.S.A.
1955, c. 338

(13) *The Town and Village Act* is amended as to section 271, subsection (3) by striking out the words "except within one year after the date on which the cause of action arose, and".

Amends
R.S.A.
1955, c. 215

(14) *The Municipal District Act* is amended as to section 242, subsection (1) by striking out the words "except within six months from the date on which the cause of action arose and".

Amends
R.S.A.
1955, c. 297

(15) *The School Act* is amended by striking out section 449.

Amends
1961, c. 36

(16) *The Alberta Hospitals Act* is amended by striking out section 40.

Amends
1954, c. 7

(17) *The Calgary Hospitals Board Act* is amended by striking out section 4.

Amends
R.S.A.
1955, c. 276

(18) *The Railway Act* is amended by striking out section 204 and by substituting the following:

Proof in
action for
indemnity

204. In an action for indemnity for any damages or injury sustained by reason of the construction or operation of a railway, the defendant may plead the general issue and give this Act and the special Act and the special matter in evidence at the trial and may prove that the damage was done pursuant to and by the authority of this Act or of the special Act.

Saving
clause

5.—(1) Nothing in this Act enables any action to be brought which was barred before the commencement of this Act by any Act or part of an Act repealed by section 2 or 4 of this Act.

(2) The time for bringing proceedings in respect of a cause of action which arose before the commencement of this Act shall, if it is not then already expired, expire

(a) at the time when it would have expired apart from the provisions of this Act, or

(b) at the time when it would have expired if all the provisions of this Act had at all material times been in force,

whichever is the later.

Coming
into force

6. This Act comes into force on the first day of July, 1966.

APPENDIX E

THE 1967 MANITOBA AMENDMENTS

*An Act to amend The Limitation of Actions Act
and to amend Certain Provisions of Other Acts
relating to Limitations of Actions*

Statutes of Manitoba, 1966-67

CHAPTER 32

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

1. Section 2 of The Limitation of Actions Act, being chapter ^{Sec. 2 am.} 145 of the Revised Statutes, is amended

(a) by striking out clause (a) thereof and substituting therefor the following clause:

(a) "action" means any civil proceeding but does not ^{"action,"} include any proceeding whether for the recovery of money or for any other purpose that is commenced by way of information or complaint or the procedure for which is governed by The Summary Convictions Act;

and

(b) by adding thereto, immediately after clause (d) thereof, the following clause:

(d1) "injuries to the person" includes any disease ^{"injuries to the person"} and any impairment of the physical or mental condition of a person;

2. Section 3 of the Act is repealed and the following section is ^{Sec. 3 rep. & sub.} substituted therefor:

3. (1) The following actions shall be commenced within ^{Limitations} and not after the times respectively hereinafter mentioned:

(a) Actions for penalties imposed by any statute ^{Penal actions} brought by an informer suing for himself alone or for the Crown as well as himself, or by any person authorized to sue for the same, not being the person aggrieved, within one year after the cause of action arose.

Actions for
penalties

(b) Actions for penalties, damages, or sums of money in the nature of penalties, given by any statute to the person aggrieved, within two years after the cause of action arose.

Defamation

(c) Actions for defamation, within two years of the publication of the defamatory matter, or, where special damage is the gist of the action, within two years after the occurrence of such damage.

Actions for
personal
damages

(d) Actions for malicious prosecution, seduction, false imprisonment, trespass to the person, assault, battery, wounding or other injuries to the person, whether caused by misfeasance or nonfeasance, and whether the action be founded on a tort or on a breach of contract or on any breach of duty, within two years after the cause of action arose.

Trespass to
real property

(e) Actions for trespass or injury to real property, whether direct or indirect, within six years after the cause of action arose.

Trespass to
chattels

(f) Actions for trespass or injury to chattels, whether direct or indirect, or for the taking away, conversion, or detention of chattels, within two years after the cause of action arose.

Actions for
money

(g) Actions for the recovery of money (except in respect of a debt charged upon land), whether recoverable as a debt or damages or otherwise, and whether a recognizance, bond, covenant, or other specialty, or on a simple contract, express or implied, and actions for an account or not accounting, within six years after the cause of action arose.

Fraudulent
misrepresentation

(h) Actions grounded on fraudulent misrepresentation, within six years from the discovery of the fraud.

Mistake

(i) Actions grounded on accident, mistake, or other equitable ground of relief not hereinbefore specifically dealt with, within six years from the discovery of the cause of action.

Judgments

(j) Actions on a judgment or order for the payment of money, within ten years after the cause of action thereon arose, but no such action shall be brought upon a judgment or order recovered upon any previous judgment or order.

Actions
under
Fatal
Accidents
Act

(k) Actions brought under and by virtue of The Fatal Accidents Act, within twelve months after the death of the deceased person by reason of whose death the action is brought.

(l) Any other action for which provision is not specifically made in this Act, within six years after the cause of action arose. Other actions

(2) Where an action is brought for injuries to the person or for injuries to property within the time limited by this Act or any other Act of the Legislature and third party proceedings are instituted, or a counter-claim is made in respect of damages caused in the same accident, the lapse of time limited by this Act or any other Act of the Legislature is not a bar to the third party proceedings or to a counterclaim by the defendant or third party. Counter-claim and third party proceedings

3. The Act is further amended by adding thereto, immediately after section 3 thereof, the following sections: Secs. 3A, 3B and 3C added

3A. (1) Subject to subsection (2), no action shall be brought against a person for the recovery of damages occasioned by a motor vehicle as defined in The Highway Traffic Act or by the operator thereof after the expiration of one year from the time when the damages were sustained. Limitation period for motor vehicle accidents

(2) Where death is caused by a motor vehicle as defined in The Highway Traffic Act or by the operator thereof, the action may be brought within the time limited by clause (k) of section 3. Limitation period for motor vehicle accidents where death ensues

3B. Sections 3 and 3A are subject to Part IA. Secs. 3 and 3A subject to Part IA

3C. Notwithstanding any limitation provision to the contrary in force on the coming into force of this section and contained in any other Act of the Legislature, but subject to the provisions of this Act, the periods within which actions shall be commenced set out in sections 3 and 3A apply in respect of actions to which such limitation provision in another Act has heretofore applied unless that other Act or the limitation provision thereof is mentioned in Schedule A. Provisions of this Act to prevail over other provisions

4. This Act is further amended by adding thereto, immediately after section 11 thereof, the following sections as a separate Part thereof: Part IA added

PART IA

EXTENSION OF LIMITATION PERIOD

11A. (1) No enactment limiting the time for beginning actions affords a defence to an action to which this section applies in so far as the action relates to, or is founded on, a cause of action in respect of which Extension of time limit in certain cases

(a) it is proved to the satisfaction of the court that the material facts relating to that cause of action were,

or included, facts of a decisive character which were at all times outside the knowledge, actual or constructive, of the plaintiff until a date which

(i) either was after the end of the limitation period fixed in respect of that cause of action, or was not earlier than twelve months before the end of that period, and

(ii) in either case, was a date not earlier than twelve months before the date on which the action was begun;

and

(b) the court has, whether before or after the beginning of the action, granted leave for the purposes of this section.

Application
of section

(2) This section applies to any action in which

(a) damages are claimed for negligence, nuisance, or breach of duty (whether the duty exists by virtue of a contract or of a provision in, or made under, a statute or independently of any contract or any such provision); and

(b) the damages claimed by the plaintiff arise out of injuries to the person of the plaintiff or any other person.

Other
defences not
affected

(3) Nothing in this section excludes or otherwise affects

(a) any defence that, in any action to which this section applies, may be available by virtue of

(i) any enactment other than an enactment imposing a period of limitation on the bringing of an action, or

(ii) any rule of law or equity; or

(b) the operation of any enactment or rule of law or equity that, apart from this section, would enable such an action to be brought after the end of the limitation period herein fixed in respect of the cause of action on which that action is founded.

Application
for leave
of court

11B. (1) Any application for the leave of the court for the purposes of section 11A may with the consent of the court be made *ex parte*.

Leave
before
action

(2) Where such an application is made before the beginning of any relevant action, the court shall grant leave in respect of any cause of action to which the application relates

if, but only if, on evidence adduced by or on behalf of the plaintiff, it appears to the court that, if such an action were brought forthwith and the like evidence were adduced in that action, that evidence would, in the absence of any evidence to the contrary, be sufficient

(a) to establish that cause of action, apart from any defence based on a provision in any Act limiting the time within which actions may be begun; and

(b) to prove to the satisfaction of the court the matters to which clause (a) of subsection (1) of section 11A relates.

(3) Where such an application is made after the beginning ^{Leave after} of a relevant action, the court shall grant leave in respect of any cause of action to which the application relates if, but only if, on evidence adduced by or on behalf of the plaintiff, it appears to the court

(a) that, if the like evidence were adduced in that action, that evidence would, in the absence of any evidence to the contrary, be sufficient

(i) to establish that cause of action, apart from any defence based on a provision in any Act limiting the time within which actions may be begun, and

(ii) to prove to the satisfaction of the court the matters to which clause (a) of subsection (1) of section 11A relates; and

(b) that, until after the beginning of that action, it was outside the knowledge, actual or constructive, of the plaintiff that the matters constituting that cause of action had occurred on such a date as, apart from section 11A, to afford a defence based on a provision in any Act limiting the time within which actions may be begun.

(4) In this section "relevant action", in relation to an application for the leave of the court, means any action ^{Meaning of "relevant action"} in connection with which the leave sought by the application is required.

11C. (1) In relation to any action to which section 11A applies, and that is an action in respect of one or more causes of action surviving for the benefit of the personal representative of a deceased person by virtue of section 49 of The Trustee Act, subsections (1) and (3) of section 11A and section 11B have effect subject to subsections (4) and (5) of this section. ^{Application of this sec. and secs. 11A and 11B to actions after death of injured person}

(2) Subsections (1) and (3) of section 11A and section ^{Idem} 11B have effect, subject to subsections (4) and (6) of this

section, in relation to an action brought under The Fatal Accidents Act for damages in respect of a person's death, as they have effect in relation to an action to which section 11A applies.

Idem

(3) In subsections (4) and (5) and in sections 11A and 11B as modified by those subsections, "the deceased" means the person referred to in subsection (1) or subsection (2) of this section, as the case may be.

Idem

(4) For the purposes of the application of clause (a) of subsection (1) of section 11A to an action falling within subsection (1) or subsection (2) of this section,

(a) any reference in the said clause (a) to the plaintiff shall be construed as a reference to the deceased; and

(b) the matters to which that clause relates shall be deemed to be proved to the satisfaction of the court in relation to a cause of action if either the matters specified in that clause, as modified by clause (a) of this subsection, are proved, or it is proved that the material facts relating to that cause of action were, or included, facts of a decisive character which, at all times until his death, were outside the knowledge, actual or constructive, of the deceased.

Reference
to sec.
11A (1)

(5) Any reference in this Part to the matters to which clause (a) of subsection (1) of section 11A relates shall, in relation to an action falling within subsection (1) or subsection (2), be construed as a reference to those matters as modified by subsection (4).

Application
to Fatal
Accidents
Act

(6) In the application of this Part to an action brought under The Fatal Accidents Act,

(a) any reference to a cause of action to which an action relates shall be construed as a reference to a cause of action in respect of which it is claimed that the deceased would, if his death had not ensued, have been entitled to maintain an action and recover damages in respect thereof;

(b) any reference to establishing a cause of action shall be construed as a reference to establishing that the deceased would, if his death had not ensued, have been entitled to maintain an action and recover damages in respect thereof.

Time limit
for claiming
contribution
between
tortfeasors

11D. (1) Where under The Tortfeasors and Contributory Negligence Act a tortfeasor (in this section referred to as "the first tortfeasor") becomes entitled after the passing of this Act to a right to recover contribution in respect of

any damage from another tortfeasor, no action to recover contribution by virtue of that right shall, subject to subsection (3), be brought after the end of the period of two years from the date on which that right accrued to the first tortfeasor.

(2) For the purposes of this section the date on which a right to recover contribution in respect of any damage accrues to a tortfeasor (in this subsection referred to as “the relevant date”), shall be ascertained as follows; that is to say,

Ascertain-
ment of
relevant
date

(1) if the tortfeasor is held liable in respect of that damage by a judgment given in any civil proceedings, or an award made on any arbitration, the relevant date is the date on which the judgment is given, or the date of the award, as the case may be; and

(b) if, in any case not falling within clause (a), the tortfeasor admits liability in favour of one or more persons in respect of that damage, the relevant date is the earliest date on which the amount to be paid by him in discharge of that liability is agreed by, or on behalf of, the tortfeasor and that person, or each of those persons, as the case may be;

and for the purposes of this subsection no account shall be taken of any judgment or award given or made on appeal in so far as it varies the amount of damages awarded against the tortfeasor.

11E. Section 11 applies for the purposes of this Part.

Supple-
mentary
provisions

11F. (1) Subject to subsections (2) and (3), this Part, other than section 11D, has effect in relation to causes of action that accrued before, as well as causes of action that accrue after, the coming into force of this Part, and has effect in relation to any cause of action that accrued before the coming into force of this Part notwithstanding that an action in respect thereof has been commenced and is pending on the coming into force of this Part.

Transitional
provisions

(2) In the application of section 11B to an action that is pending on the coming into force of this Part, subsection (3) of that section shall have effect with the omission of clause (b) thereof.

Application
of sec. 11B
to pending
actions

(3) For the purposes of this section an action shall not be taken to be pending at any time after a final order or judgment has been made or given therein, notwithstanding that an appeal is pending or that the time for appealing has not expired; and accordingly section 11A does not have effect in relation to a cause of action in respect of which a final order or judgment has been made or given before the coming into force of this Part.

Meaning
of pending
action

Interpre-
tation of
Part 1A

11G. (1) In this Part “the court”, in relation to an action, means the court in which the action has been, or is intended to be, brought.

References
to limitation
period

(2) Subject to subsections (3) and (4), in this Part any reference to the period relating to a cause of action is a reference to the period running from the date on which that cause of action accrued.

Idem

(3) In relation to any cause of action in respect of which, by virtue of section 48, an action could have been brought after the end of the period of limitation fixed herein, any reference in this Part to the period relating to that cause of action means the period up to the end of which an action could, by virtue of that section, have been brought in respect thereof.

Idem

(4) In relation to a cause of action in respect of which, by virtue of clause (h) of subsection (1) of section 3 or section 4, the period of limitation did not begin to run until a date after the cause of action accrued, any reference in this Part to the period of limitation relating to that cause of action means the period running from the date on which, by virtue of that section, the period of limitation began to run.

Reference
to material
facts

(5) In this Part any reference to the material facts relating to a cause of action is a reference to any one or more of the following, that is to say:

(a) The fact that personal injuries resulted from the negligence, nuisance, or breach of duty constituting that cause of action.

(b) The nature or extent of the personal injuries resulting from that negligence, nuisance, or breach of duty.

(c) The fact that the personal injuries so resulting were attributable to that negligence, nuisance, or breach of duty, or the extent to which any of those personal injuries were so attributable.

Nature of
material
facts

(6) For the purposes of this Part any of the material facts relating to a cause of action shall be taken, at any particular time, to have been facts of a decisive character if they were facts which a reasonable person, knowing those facts and having obtained appropriate advice with respect to them, would have regarded at that time as determining, in relation to that cause of action, that, apart from any defence under section 2, an action would have a reasonable prospect of succeeding and of resulting in the award of damages sufficient to justify the bringing of the action.

(7) Subject to subsection (8), for the purpose of this Part a fact shall, at any time, be taken to have been outside the knowledge, actual or constructive, of a person if, but only if, ^{Where facts deemed to be outside knowledge}

(a) he did not then know that fact;

(b) in so far as that fact was capable of being ascertained by him, he had taken all such action, if any, as it was reasonable for him to have taken before that time for the purpose of ascertaining it; and

(c) in so far as there existed, and were known to him, circumstances from which, with appropriate advice, that fact might have been ascertained or inferred, he had taken all such action, if any, as it was reasonable for him to have taken before that time for the purpose of obtaining appropriate advice with respect to those circumstances.

(8) In the application of subsection (7) to a person at a time when he was under a disability and was in the custody of a parent, any reference to that person in clause (a), (b) or (c) of that subsection shall be construed as a reference to that parent. ^{Idem}

(9) In this section "appropriate advice", in relation to any fact or circumstances, means the advice of competent persons qualified, in their respective spheres, to advise on the professional or technical aspects of that fact or those circumstances, as the case may be. ^{Meaning of "appropriate advice"}

5. The Act is further amended by adding thereto, at the end thereof, the following Schedule: ^{Sch. A added}

SCHEDULE A

1. The Bulk Sales Act
2. The Chiropractic Act
3. The Controverted Elections Act
4. The Dental Association Act
5. The Election Act
6. The Hospital Services Insurance Act
7. The Insurance Act
8. The Mechanics' Liens Act
9. The Medical Act
10. The Manitoba Medical Services Insurance Act
11. The following provisions of The Municipal Act, namely: Sections 234, 523, 853, 900 and 1187

12. The Proceedings against The Crown Act
13. The Public Officers Act
14. Section 177 of The Real Property Act
15. The Surveys Act
16. The Testators Family Maintenance Act
17. The Thresher's Liens Act
18. The following provisions of The Trustee Act, namely:
Subsection (7) of Section 37, Subsection (2) of Section 47 and Subsection (2) of Section 49
19. The Warehouse Receipts Act
20. The Woodmen's Liens Act
21. The Workmen's Compensation Act
22. The Osteopathic Act
23. The Naturopathic Act
24. The Unsatisfied Judgment Fund Act

Sec. 21 of
Chiropractic
Act
amended

6. Section 21 of The Chiropractic Act, being chapter 37 of the Revised Statutes, is amended by striking out the words "one year" in the fourth line thereof and substituting therefor the words "two years".

S. 15 of
Defamation
Act rep.

7. Section 15 of The Defamation Act, being chapter 60 of the Revised Statutes, is repealed.

Sec. 43 of
Medical Act
amended

8. Section 43 of The Medical Act, being chapter 29 of the Statutes of Manitoba, 1964 (First Session), is amended by striking out the words "one year" in the third and fourth lines thereof and substituting therefor the words "two years".

Sec. 20 of
Naturopathic Act
amended

9. Section 20 of The Naturopathic Act, being chapter 184 of the Revised Statutes, is amended by striking out the words "one year" in the fourth line thereof and substituting therefor the words "two years".

Sec. 20 of
Osteopathic
Act
amended

10. Section 20 of The Osteopathic Act, being chapter 194 of the Revised Statutes, is amended by striking out the words "one year" in the fourth line thereof and substituting therefor the words "two years".

Sec. 3 of
Proceedings
against The
Crown Act
amended

11. Section 3 of The Proceedings against The Crown Act, being chapter 207 of the Revised Statutes, as amended by chapter 54 of the Statutes of Manitoba, 1955, is amended

(a) by striking out the words "three months" in the first line of clause (b) of subsection (3) thereof and substituting therefor the words "two years";

and

(b) by striking out the words "fifteen months" in the fourth line of subsection (4) thereof and substituting therefor the words "two years".

12. Subsection (1) of section 21 of The Public Officers Act, Sec. 21 of Public Officers Act amended being chapter 213 of the Revised Statutes, is amended by striking out the words "six months" where they appear in the seventh line, and again in the ninth line, thereof and substituting therefor, in each case, the words "two years".

13. Subsection (2) of section 49 of The Trustee Act, Subsec. (2) of sec. 49 of Trustee Act amended being chapter 273 of the Revised Statutes, is amended by striking out the words "one year" in the second line thereof and substituting therefor the words "two years".

14. The Municipal Act, being chapter 173 of the Revised Statutes, is amended Municipal Act amended

(a) by repealing subsection (3) of section 470 thereof;

(b) by striking out the words "fifteen months" where they appear

(i) in the eighth line of subsection (1) of section 523 thereof, and

(ii) in the fifth line, and again in the sixth line, of subsection (2) of section 523 thereof,

and substituting therefor, in each case, the words "two years";

(c) by striking out the words "six months" in the second and third lines of section 853 thereof and substituting therefor the words "two years";

and

(d) by striking out the words "six months" in the sixth line of subsection (2) of section 900 thereof and substituting therefor the words "two years".

15. The Winnipeg Charter, 1956, being chapter 87 of the Statutes of Manitoba, 1956, is amended Winnipeg Charter amended

(a) by striking out the words "one year" where they appear in the third line, and again in the sixth line, of subsection (2) of section 497 thereof and substituting therefor, in each case, the words "two years";

(b) by striking out the words "three months" in the sixth line of subsection (3) of section 684 thereof and substituting therefor the words "two years";

(c) by striking out the words "six months" in the fifth line of section 755 thereof and substituting therefor the words "two years";

and

(d) by striking out the words "twelve months" where they appear in the fifth line, and again in the seventh line of section 756 thereof and substituting therefor, in each case, the words "two years".

St. Boniface
Charter
amended

16. The St. Boniface Charter, 1953, being chapter 68 of the Statutes of Manitoba, 1953, is amended

(a) by striking out the words "three months" in the seventh line of subsection (3) of section 792 thereof and substituting therefor the words "two years";

and

(b) by striking out the words "one year" where they appear in the third line, and again in the sixth line, of section 815 thereof and substituting therefor, in each case, the words "two years".

St. James
Charter
amended

17. Section 70 of The St. James Charter, being chapter 85 of the Statutes of Manitoba, 1956, is amended

(a) by striking out the words "six months" in the third line thereof and substituting therefor the words "two years";

and

(b) by striking out the words "one year" in the fifth line thereof and substituting therefor the words "two years".

East
Kildonan
Charter
amended

18. Section 65 of The East Kildonan Charter, being chapter 80 of the Statutes of Manitoba, 1957, is amended

(a) by striking out the words "six months" in the third line thereof and substituting therefor the words "two years";

and

(b) by striking out the words "one year" in the fifth line thereof and substituting therefor the words "two years".

West
Kildonan
Charter
amended

19. Section 55 of The West Kildonan Charter, being chapter 90 of the Statutes of Manitoba, 1961 (First Session), is amended

(a) by striking out the words "six months" in the second line thereof and substituting therefor the words "two years";

and

(b) by striking out the words "one year" in the fourth line thereof and substituting therefor the words "two years".

20. Section 304 of The Highway Traffic Act, being chapter 29 of the Statutes of Manitoba, 1966, is repealed. Sec. 304 of new Highway Traffic Act repealed

21. The amendments made by this Act, except section 4 of this Act, do not apply to actions where the cause of action arose prior to the coming into force of this Act. Transitional

22. This Act comes into force on a day fixed by proclamation. Commencement of Act

APPENDIX F

THE ENGLISH LEGISLATION

I LIMITATION ACT, 1939

2 & 3 Geo. 6, c. 21

PART I.

PERIODS OF LIMITATION FOR DIFFERENT CLASSES OF ACTION.

1. The provisions of this Part of this Act shall have effect subject to the provisions of Part II of this Act which provide for the extension of the periods of limitation in the case of disability, acknowledgment, part payment, fraud and mistake.

Part I to be subject to provisions of Part II relating to disability, acknowledgment, fraud, &c.

Actions of contract and tort and certain actions.

2.—(1) The following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say:—

Limitation of actions of contract and tort, and certain other actions

- (a) actions founded on simple contract or on tort;
- (b) actions to enforce a recognisance;
- (c) actions to enforce an award, where the submission is not by an instrument under seal;
- (d) actions to recover any sum recoverable by virtue of any enactment, other than a penalty or forfeiture or sum by way of penalty or forfeiture.

(2) An action for an account shall not be brought in respect of any matter which arose more than six years before the commencement of the action.

(3) An action upon a specialty shall not be brought after the expiration of twelve years from the date on which the cause of action accrued:

Provided that this subsection shall not affect any action for which a shorter period of limitation is prescribed by any other provision of this Act.

(4) An action shall not be brought upon any judgment after the expiration of twelve years from the date on which the judgment became enforceable, and no arrears of interest

in respect of any judgment debt shall be recovered after the expiration of six years from the date on which the interest became due.

(5) An action to recover any penalty or forfeiture, or sum by way of penalty or forfeiture, recoverable by virtue of any enactment shall not be brought after the expiration of two years from the date on which the cause of action accrued:

Provided that for the purposes of this subsection the expression "penalty" shall not include a fine to which any person is liable on conviction of a criminal offence.

(6) Subsection (1) of this section shall apply to an action to recover seamen's wages, but save as aforesaid this section shall not apply to any cause of action within the Admiralty jurisdiction of the High Court which is enforceable in rem.

(7) This section shall not apply to any claim for specific performance of a contract or for an injunction or for other equitable relief, except in so far as any provision thereof may be applied by the Court by analogy in like manner as the corresponding enactment repealed by this Act has heretofore been applied.

Limitation
in case of
successive
conversions
and
extinction
of title of
owner of
converted
goods

3.—(1) Where any cause of action in respect of the conversion or wrongful detention of a chattel has accrued to any person and, before he recovers possession of the chattel, a further conversion or wrongful detention takes place, no action shall be brought in respect of the further conversion or detention after the expiration of six years from the accrual of the cause of action in respect of the original conversion or detention.

(2) Where any such cause of action has accrued to any person and the period prescribed for bringing that action and for bringing any action in respect of such a further conversion or wrongful detention as aforesaid has expired and he has not during that period recovered possession of the chattel, the title of that person to the chattel shall be extinguished.

Actions to recover land, advowsons and rent.

Limitation
of actions
to recover
land

4.—(1) No action shall be brought by the Crown to recover any land after the expiration of thirty years from the date on which the right of action accrued to the Crown or, if it first accrued to some person through whom the Crown claims, to that person:

Provided that an action to recover foreshore may be brought by the Crown at any time before the expiration of sixty years from the said date, and where any right of action to recover land, which has ceased to be foreshore but remains in the

ownership of the Crown, accrued when the land was foreshore, the action may be brought at any time before the expiration of sixty years from the date of the accrual of the right of action, or of thirty years from the date when the land ceased to be foreshore, whichever period first expires.

(2) No action shall be brought by any spiritual or eleemosynary corporation sole to recover any land after the expiration of thirty years from the date on which the right of action accrued to the corporation sole or, if it first accrued to some person through whom the corporation sole claims, to that person.

(3) No action shall be brought by any other person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person:

Provided that, if the right of action first accrued to the Crown or a spiritual or eleemosynary corporation sole through whom the person bringing the action claims, the action may be brought at any time before the expiration of the period during which the action could have been brought by the Crown or the corporation sole, or of twelve years from the date on which the right of action accrued to some person other than the Crown or the corporation sole, whichever period first expires.

5.—(1) Where the person bringing an action to recover land, or some person through whom he claims, has been in possession thereof, and has while entitled thereto been dispossessed or discontinued his possession, the right of action shall be deemed to have accrued on the date of the dispossession or discontinuance. Accrual of right of action in case of present interests in land

(2) Where any person brings an action to recover any land of a deceased person, whether under a will or on intestacy, and the deceased person was on the date of his death in possession of the land or, in the case of a rentcharge created by will or taking effect upon his death, in possession of the land charged, and was the last person entitled to the land to be in possession thereof, the right of action shall be deemed to have accrued on the date of his death.

(3) Where any person brings an action to recover land, being an estate or interest in possession assured otherwise than by will to him, or to some person through whom he claims, by a person who, at the date when the assurance took effect, was in possession of the land or, in the case of a rentcharge created by the assurance, in possession of the land charged, and no person has been in possession of the land by virtue of the assurance, the right of action shall be deemed to have accrued on the date when the assurance took effect.

Accrual of
right of
action in
case of
future
interests

6.—(1) Subject as hereafter in this section provided, the right of action to recover any land shall, in a case where the estate or interest claimed was an estate or interest in reversion or remainder or any other future estate or interest and no person has taken possession of the land by virtue of the estate or interest claimed, be deemed to have accrued on the date on which the estate or interest fell into possession by the determination of the preceding estate or interest.

(2) If the person entitled to the preceding estate or interest, not being a term of years absolute, was not in possession of the land on the date of the determination thereof, no action shall be brought by the person entitled to the succeeding estate or interest after the expiration of twelve years from the date on which the right of action accrued to the person entitled to the preceding estate or interest, or six years from the date on which the right of action accrued to the person entitled to the succeeding estate or interest, whichever period last expires:

Provided that, where the Crown or a spiritual or eleemosynary corporation sole is entitled to the succeeding estate or interest, the foregoing provisions of this subsection shall have effect with the substitution for the reference to twelve years of a reference to thirty years, and for the reference to six years of a reference to twelve years.

(3) The foregoing provisions of this section shall not apply to any estate or interest which falls into possession on the determination of an entailed interest and which might have been barred by the person entitled to the entailed interest.

(4) No person shall bring an action to recover any estate or interest in land under an assurance taking effect after the right of action to recover the land had accrued to the person by whom the assurance was made or some person through whom he claimed or some person entitled to a preceding estate or interest, unless the action is brought within the period during which the person by whom the assurance was made could have brought such an action.

(5) Where any person is entitled to any estate or interest in land in possession and, while so entitled, is also entitled to any future estate or interest in that land, and his right to recover the estate or interest in possession is barred under this Act, no action shall be brought by that person, or by any person claiming through him, in respect of the future estate or interest, unless in the meantime possession of the land has been recovered by a person entitled to an intermediate estate or interest.

7.—(1) Subject to the provisions of subsection (1) of section nineteen of this Act, the provisions of this Act shall apply to equitable interests in land, including interests in the proceeds of the sale of land held upon trust for sale, in like manner as they apply to legal estates, and accordingly a right of action to recover the land shall, for the purposes of this Act but not otherwise, be deemed to accrue to a person entitled in possession to such an equitable interest in the like manner and circumstances and on the same date as it would accrue if his interest were a legal estate in the land.

Provisions
in case of
settled land
and land
held on
trust

(2) Where the period prescribed by this Act has expired for the bringing of an action to recover land by a tenant for life or a statutory owner of settled land, his legal estate shall not be extinguished, if and so long as the right of action to recover the land of any person entitled to a beneficial interest in the land either has not accrued or has not been barred by this Act, and the legal estate shall accordingly remain vested in the tenant for life or statutory owner and shall devolve in accordance with the Settled Land Act, 1925; but if and when every such right of action as aforesaid has been barred by this Act, the said legal estate shall be extinguished.

15 & 16
Geo. 5, c. 18

(3) Where any land is held upon trust including a trust for sale, and the period prescribed by this Act has expired for the bringing of an action to recover the land by the trustees, the estate of the trustees shall not be extinguished if and so long as the right of action to recover the land of any person entitled to a beneficial interest in the land or in the proceeds of sale either has not accrued or has not been barred by this Act, but if and when every such right of action has been so barred, the estate of the trustees shall be extinguished.

(4) Where any settled land is vested in a statutory owner or any land is held upon trust, including a trust for sale, an action to recover the land may be brought by the statutory owner or trustees on behalf of any person entitled to a beneficial interest in possession in the land or in the proceeds of sale whose right of action has not been barred by this Act, notwithstanding that the right of action of the statutory owner or trustees would apart from this provision have been barred by this Act.

(5) Where any settled land or any land held on trust for sale is in the possession of a person entitled to a beneficial interest in the land or in the proceeds of sale, not being a person solely and absolutely entitled thereto, no right of action to recover the land shall be deemed for the purposes of this Act to accrue during such possession to any person in whom the land is vested as tenant for life, statutory owner or trustee, or to any other person entitled to a beneficial interest in the land or the proceeds of sale.

Accrual of
right of
action in
case of
forfeiture or
breach of
condition

8. A right of action to recover land by virtue of a forfeiture or breach of condition shall be deemed to have accrued on the date on which the forfeiture was incurred or the condition broken:

Provided that, if such a right has accrued to a person entitled to an estate or interest in reversion or remainder and the land was not recovered by virtue thereof, the right of action to recover the land shall not be deemed to have accrued to that person until his estate or interest fell into possession, as if no such forfeiture or breach of condition had occurred.

Accrual of
right of
action in
case of
certain
tenancies

9.—(1) A tenancy at will shall, for the purposes of this Act, be deemed to be determined at the expiration of a period of one year from the commencement thereof, unless it has previously been determined, and accordingly the right of action of the person entitled to the land subject to the tenancy shall be deemed to have accrued on the date of such determination.

(2) A tenancy from year to year or other period, without a lease in writing, shall, for the purposes of this Act, be deemed to be determined at the expiration of the first year or other period, and accordingly the right of action of the person entitled to the land subject to the tenancy shall be deemed to have accrued at the date of such determination:

Provided that, where any rent has subsequently been received in respect of the tenancy, the right of action shall be deemed to have accrued on the date of the last receipt of rent.

(3) Where any person is in possession of land by virtue of a lease in writing by which a rent of not less than twenty shillings is reserved, and the rent is received by some person wrongfully claiming to be entitled to the land in reversion immediately expectant on the determination of the lease, and no rent is subsequently received by the person rightfully so entitled, the right of action of the last-named person to recover the land shall be deemed to have accrued at the date when the rent was first received by the person wrongfully claiming as aforesaid and not at the date of the determination of the lease.

(4) Subsections (1) and (3) of this section shall not apply to any tenancy at will or lease granted by the Crown.

Right of
action not
to accrue or
continue
unless there
is adverse
possession

10.—(1) No right of action to recover land shall be deemed to accrue unless the land is in the possession of some person in whose favour the period of limitation can run (hereafter in this section referred to as “adverse possession”) and where under the foregoing provisions of this Act any such right of

action is deemed to accrue on a certain date and no person is in adverse possession on that date, the right of action shall not be deemed to accrue unless and until adverse possession is taken of the land.

(2) Where a right of action to recover land has accrued and thereafter, before the right is barred, the land ceases to be in adverse possession, the right of action shall no longer be deemed to have accrued and no fresh right of action shall be deemed to accrue unless and until the land is again taken into adverse possession.

(3) For the purposes of this section—

- (a) possession of any land subject to a rentcharge by a person (other than the person entitled to the rentcharge) who does not pay the rent shall be deemed to be adverse possession of the rentcharge; and
- (b) receipt of rent under a lease by a person wrongfully claiming, in accordance with subsection (3) of the last foregoing section, the land in reversion shall be deemed to be adverse possession of the land.

11. Where a person entitled in remainder to an entailed interest in any land has made an assurance thereof which fails to bar the issue in tail or the estates and interests taking effect on the determination of the entailed interest, or fails to bar the last-mentioned estates and interests only, and any person takes possession of the land by virtue of the assurance, and that person or any other person whatsoever (other than a person entitled to possession by virtue of the settlement) is in possession of the land for a period of twelve years from the commencement of the time at which the assurance, if it had then been executed by the person entitled to the entailed interest, would have operated, without the consent of any other person, to bar the issue in tail and such estates and interests as aforesaid, then, at the expiration of that period, the assurance shall operate, and be deemed always to have operated, to bar the issue in tail and those estates and interests.

Cure of
defective
disentailing
assurance

12. When a mortgagee of land has been in possession of any of the mortgaged land for a period of twelve years, no action to redeem the land of which the mortgagee has been so in possession shall thereafter be brought by the mortgagor or any person claiming through him.

Limitation
of redemp-
tion actions

13. For the purposes of this Act, no person shall be deemed to have been in possession of any land by reason only of having made a formal entry thereon, and no continual or other claim upon or near any land shall preserve any right of action to recover the land.

No right of
action to be
preserved
by formal
entry or
continual
claim

Limitation
of actions
to enforce
advowsons

14.—(1) No person shall bring an action to enforce a right to present to or bestow any ecclesiastical benefice, as patron thereof, after the expiration of one or other of the following periods, whichever last expires, that is to say:—

- (a) a period during which three clerks in succession have held the benefice adversely to the right of presentation or gift of that person, or of some person through whom he claims; or
- (b) a period of sixty years during which the benefice has been held adversely to the said right;

and in no case after the expiration of a period of one hundred years during which the benefice has been held adversely to the said right or to the right of some person entitled to a preceding estate or interest or an undivided share or alternate right of presentation or gift held or derived under the same title.

This subsection shall apply to the Crown or a bishop claiming any such right as aforesaid as patron, but shall not affect the right of the Crown or a bishop to present or collate to any ecclesiastical benefice by reason of a lapse.

(2) Where any benefice becomes void after being held adversely to the right of presentation or gift of the patron thereof and a clerk is presented or collated thereto by His Majesty or the ordinary, the possession of that clerk shall be deemed to be adverse, but, in a case where the benefice is avoided in consequence of the incumbent thereof being made a bishop, the incumbency of the new clerk shall, for the purpose of paragraph (a) of the foregoing subsection, be deemed to be a continuation of the prior incumbency.

Administra-
tion to date
back to
death

15. For the purposes of the provisions of this Act relating to actions for the recovery of land and advowsons, an administrator of the estate of a deceased person shall be deemed to claim as if there had been no interval of time between the death of the deceased person and the grant of the letters of administration.

Extinction
of title after
expiration
of period
15 & 16
Geo. 5. c. 21

16. Subject to the provisions of section seven of this Act and of section seventy-five of the Land Registration Act, 1925, at the expiration of the period prescribed by this Act for any person to bring an action to recover land (including a redemption action) or an action to enforce an advowson, the title of that person to the land or advowson shall be extinguished.

Limitation
of actions
to recover
rent or
dower

17. No action shall be brought, or distress made, to recover arrears of rent or dower, or damages in respect thereof, after the expiration of six years from the date on which the arrears became due.

*Actions to recover money secured by a mortgage or charge
or to recover proceeds of the sale of land.*

18.—(1) No action shall be brought to recover any principal sum of money secured by a mortgage or other charge on property, whether real or personal, or to recover proceeds of the sale of land, after the expiration of twelve years from the date when the right to receive the money accrued.

Limitation
of actions
to recover
money
secured by a
mortgage or
charge or
to recover
proceeds
of the sale
of land

(2) No foreclosure action in respect of mortgaged personal property shall be brought after the expiration of twelve years from the date on which the right to foreclose accrued:

Provided that if, after that date the mortgagee was in possession of the mortgaged property, the right to foreclose on the property which was in his possession shall not, for the purposes of this subsection, be deemed to have accrued until the date on which his possession discontinued.

(3) The right to receive any principal sum of money secured by a mortgage or other charge and the right to foreclose on the property subject to the mortgage or charge shall not be deemed to accrue so long as that property comprises any future interest or any life insurance policy which has not matured or been determined.

(4) Nothing in this section shall apply to a foreclosure action in respect of mortgaged land, but the provisions of this Act relating to actions to recover land shall apply to such an action.

(5) No action to recover arrears of interest payable in respect of any sum of money secured by a mortgage or other charge or payable in respect of proceeds of the sale of land, or to recover damages in respect of such arrears shall be brought after the expiration of six years from the date on which the interest became due:

Provided that—

- (a) where a prior mortgagee or other incumbrancer has been in possession of the property charged, and an action is brought within one year of the discontinuance of such possession by the subsequent incumbrancer, he may recover by that action all the arrears of interest which fell due during the period of possession by the prior incumbrancer or damages in respect thereof, notwithstanding that the period exceeded six years;
- (b) where the property subject to the mortgage or charge comprises any future interest or life insurance policy and it is a term of the mortgage or charge that

arrears of interest shall be treated as part of the principal sum of money secured by the mortgage or charge, interest shall not be deemed to become due before the right to receive the principal sum of money has accrued or is deemed to have accrued.

(6) This section shall not apply to any mortgage or charge on a ship.

Actions in respect of trust property or the personal estate of deceased persons.

Limitation
of actions
in respect
of trust
property

19.—(1) No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action—

- (a) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or
- (b) to recover from the trustee trust property or the proceeds thereof in the possession of the trustee, or previously received by the trustee and converted to his use.

(2) Subject as aforesaid, an action by a beneficiary to recover trust property or in respect of any breach of trust, not being an action for which a period of limitation is prescribed by any other provision of this Act, shall not be brought after the expiration of six years from the date on which the right of action accrued:

Provided that the right of action shall not be deemed to have accrued to any beneficiary entitled to a future interest in the trust property, until the interest fell into possession.

(3) No beneficiary as against whom there would be a good defence under this Act shall derive any greater or other benefit from a judgment or order obtained by any other beneficiary than he could have obtained if he had brought the action and this Act had been pleaded in defence.

Limitation
of actions
claiming
personal
estate of a
deceased
person

20. Subject to the provisions of subsection (1) of the last foregoing section, no action in respect of any claim to the personal estate of a deceased person or to any share or interest in such estate, whether under a will or on intestacy, shall be brought after the expiration of twelve years from the date when the right to receive the share or interest accrued, and no action to recover arrears of interest in respect of any legacy, or damages in respect of such arrears, shall be brought after the expiration of six years from the date on which the interest became due.

Actions against public authorities.

21.—(1) No action shall be brought against any person for any act done in pursuance, or execution, or intended execution of any Act of Parliament, or of any public duty or authority, or in respect of any neglect or default in the execution of any such Act, duty or authority, unless it is commenced before the expiration of one year from the date on which the cause of action accrued: Limitation
of actions
against
public
authorities

Provided that where the act, neglect or default is a continuing one, no cause of action in respect thereof shall be deemed to have accrued, for the purposes of this subsection, until the act, neglect or default has ceased.

(2) The foregoing provisions of this section shall not apply to any action to which the Public Authorities Protection Act, ^{56 & 57} 1893, does not apply, or to any criminal proceedings, ^{Vict. c. 61}

(3) The enactments specified in the Schedule to the said Act shall, so far as they relate to the limitation of actions, prosecutions or other proceedings in England and are not repealed by the said Act, be repealed.

PART II.

EXTENSION OF LIMITATION PERIODS IN CASE OF
DISABILITY, ACKNOWLEDGMENT, PART PAYMENT,
FRAUD AND MISTAKE.

Disability.

22. If on the date when any right of action accrued for which a period of limitation is prescribed by this Act, the person to whom it accrued was under a disability, the action may be brought at any time before the expiration of six years, or in the case of actions to which the last foregoing section applies, one year from the date when the person ceased to be under a disability or died, whichever event first occurred, notwithstanding that the period of limitation has expired: Extention
of limitation
period in
case of
disability

Provided that—

- (a) this section shall not affect any case where the right of action first accrued to some person (not under a disability) through whom the person under a disability claims;
- (b) when a right of action which has accrued to a person under a disability accrues, on the death of that person while still under a disability, to another person under a disability, no further extension of time shall be allowed by reason of the disability of the second person;

- (c) no action to recover land or money charged on land shall be brought by virtue of this section by any person after the expiration of thirty years from the date on which the right of action accrued to that person or some person through whom he claims;
- (d) this section, so far as it relates to the disability of infancy or unsoundness of mind, shall not apply to any action to which the last foregoing section applies, unless the plaintiff proves that the person under a disability was not, at the time when the right of action accrued to him, in the custody of a parent; and
- (e) this section shall not apply to any action to recover a penalty or forfeiture, or sum by way thereof, by virtue of any enactment, except where the action is brought by an aggrieved party.

Acknowledgment and part payment.

Fresh
accrual of
action on
acknowledg-
ment or part
payment

23.—(1) Where there has accrued any right of action (including a foreclosure action) to recover land or an advowson or any right of a mortgagee of personal property to bring a foreclosure action in respect of the property, and—

- (a) the person in possession of the land, benefice or personal property acknowledges the title of the person to whom the right of action has accrued; or
- (b) in the case of a foreclosure or other action by a mortgagee, the person in possession as aforesaid or the person liable for the mortgage debt makes any payment in respect thereof, whether of principal or interest;

the right shall be deemed to have accrued on and not before the date of the acknowledgment or payment.

(2) The foregoing subsection shall apply to a right of action to recover land accrued to a person entitled to an estate or interest taking effect on the determination of an entailed interest against whom time is running under section eleven of this Act, and on the making of the acknowledgment that section shall cease to apply to the land.

(3) Where a mortgagee is by virtue of the mortgage in possession of any mortgaged land and either receives any sum in respect of the principal or interest of the mortgage debt or acknowledges the title of the mortgagor, or his equity of redemption, an action to redeem the land in his possession may be brought at any time before the expiration of twelve years from the date of the payment or acknowledgment.

(4) Where any right of action has accrued to recover any debt or other liquidated pecuniary claim, or any claim to the personal estate of a deceased person or to any share or interest therein, and the person liable or accountable therefor acknowledges the claim or makes any payment in respect thereof, the right shall be deemed to have accrued on and not before the date of the acknowledgment or the last payment:

Provided that a payment of a part of the rent or interest due at any time shall not extend the period for claiming the remainder then due, but any payment of interest shall be treated as a payment in respect of the principal debt.

24.—(1) Every such acknowledgment as aforesaid shall be in writing and signed by the person making the acknowledgment.

Formal provisions as to acknowledgments and part payments

(2) Any such acknowledgment or payment as aforesaid may be made by the agent of the person by whom it is required to be made under the last foregoing section, and shall be made to the person, or to an agent of the person, whose title or claim is being acknowledged or, as the case may be, in respect of whose claim the payment is being made.

25.—(1) An acknowledgment of the title to any land, benefice, or mortgaged personalty, by any person in possession thereof shall bind all other persons in possession during the ensuing period of limitation.

Effect of acknowledgment or part payment on persons other than the maker or recipient

(2) A payment in respect of a mortgage debt by the mortgagor or any person in possession of the mortgaged property shall, so far as any right of the mortgagee to foreclose or otherwise to recover the property is concerned, bind all other persons in possession of the mortgaged property during the ensuing period of limitation.

(3) Where two or more mortgagees are by virtue of the mortgage in possession of the mortgaged land, an acknowledgment of the mortgagor's title or of his equity of redemption by one of the mortgagees shall only bind him and his successors and shall not bind any other mortgagee or his successors, and where the mortgagee by whom the acknowledgment is given is entitled to a part of the mortgaged land and not to any ascertained part of the mortgage debt, the mortgagor shall be entitled to redeem that part of the land on payment, with interest, of the part of the mortgage debt which bears the same proportion to the whole of the debt as the value of the part of the land bears to the whole of the mortgaged land.

(4) Where there are two or more mortgagors, and the title or right to redemption of one of the mortgagors is acknowledged as aforesaid, the acknowledgment shall be deemed to have been made to all the mortgagors.

(5) An acknowledgment of any debt or other liquidated pecuniary claim shall bind the acknowledged and his successors but not any other person:

Provided that an acknowledgment made after the expiration of the period of limitation prescribed for the bringing of an action to recover the debt or other claim shall not bind any successor on whom the liability devolves on the determination of a preceding estate or interest in property under a settlement taking effect before the date of the acknowledgment.

(6) A payment made in respect of any debt or other liquidated pecuniary claim shall bind all persons liable in respect thereof:

Provided that a payment made after the expiration of the period of limitation prescribed for the bringing of an action to recover the debt or other claim shall not bind any person other than the person making the payment and his successors, and shall not bind any successor on whom the liability devolves on the determination of a preceding estate or interest in property under a settlement taking effect before the date of the payment.

(7) An acknowledgment by one of several personal representatives of any claim to the personal estate of a deceased person, or to any share or interest therein, or a payment by one of several personal representatives in respect of any such claim shall bind the estate of the deceased person.

(8) In this section the expression "successor," in relation to any mortgagee or person liable in respect of any debt or claim, means his personal representatives and any other person on whom the rights under the mortgage or, as the case may be, the liability in respect of the debt or claim devolve, whether on death or bankruptcy or the disposition of property or the determination of a limited estate or interest in settled property or otherwise.

Fraud and mistake.

Postpone-
ment of
limitation
period
in case of
fraud or
mistake

26. Where, in the case of any action for which a period of limitation is prescribed by this Act, either—

- (a) the action is based upon the fraud of the defendant or his agent or of any person through whom he claims or his agent, or
- (b) the right of action is concealed by the fraud of any such person as aforesaid, or
- (c) the action is for relief from the consequences of a mistake,

the period of limitation shall not begin to run until the plaintiff has discovered the fraud or the mistake, as the case may be, or could with reasonable diligence have discovered it:

Provided that nothing in this section shall enable any action to be brought to recover, or enforce any charge against, or set aside any transaction affecting, any property which—

- (i) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know or have reason to believe that any fraud had been committed, or
- (ii) in the case of mistake, has been purchased for valuable consideration, subsequently to the transaction in which the mistake was made, by a person who did not know or have reason to believe that the mistake had been made.

PART III.

GENERAL.

27.—(1) This Act and any other enactment relating to the limitation of actions shall apply to arbitrations as they apply to actions in the High Court.

Application
of Act and
other
limitation
enactments
to arbitra-
tions

(2) Notwithstanding any term in an arbitration agreement to the effect that no cause of action shall accrue in respect of any matter required by the agreement to be referred until an award is made under the agreement, the cause of action shall, for the purpose of this Act and of any other such enactment (whether in their application to arbitrations or to other proceedings), be deemed to have accrued in respect of any such matter at the time when it would have accrued but for that term in the agreement.

(3) For the purpose of this Act and of any such enactment as aforesaid, an arbitration shall be deemed to be commenced when one party to the arbitration serves on the other party or parties a notice requiring him or them to appoint an arbitrator or to agree to the appointment of an arbitrator, or, where the arbitration agreement provides that the reference shall be to a person named or designated in the agreement, requiring him or them to submit the dispute to the person so named or designated.

(4) Any such notice as aforesaid may be served either—

- (a) by delivering it to the person on whom it is to be served; or

(b) by leaving it at the usual or last known place of abode in England of that person; or

(c) by sending it by post in a registered letter addressed to that person at his usual or last known place of abode in England;

as well as in any other manner provided in the arbitration agreement; and where a notice is sent by post in manner prescribed by paragraph (c), service thereof shall, unless the contrary is proved, be deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of post.

(5) Where the High Court orders that an award be set aside or orders, after the commencement of an arbitration, that the arbitration shall cease to have effect with respect to the dispute referred, the court may further order that the period between the commencement of the arbitration and the date of the order of the court shall be excluded in computing the time prescribed by this Act or any such enactment as aforesaid for the commencement of proceedings (including arbitration) with respect to the dispute referred.

(6) This section shall apply to an arbitration under an Act of Parliament as well as to an arbitration pursuant to an arbitration agreement, and subsections (3) and (4) thereof shall have effect, in relation to an arbitration under an Act, as if for the references to the arbitration agreement there were substituted references to such of the provisions of the Act or of any order, scheme, rules, regulations, or byelaws made thereunder as relate to the arbitration.

(7) In this section the expressions "arbitration", "arbitration agreement" and "award" have the same meanings as in the Arbitration Acts, 1889 to 1934.

Provisions
as to set-off
or counter-
claim

28. For the purposes of this Act, any claim by way of set-off or counterclaim shall be deemed to be a separate action and to have been commenced on the same date as the action in which the set-off or counterclaim is pleaded.

Acquies-
cence

29. Nothing in this Act shall affect any equitable jurisdiction to refuse relief on the ground of acquiescence or otherwise.

Application
to the
Crown and
Duke of
Cornwall

30.—(1) Save as in this Act otherwise expressly provided and without prejudice to the provisions of section thirty-two thereof, this Act shall apply to proceedings by or against the Crown in like manner as it applies to proceedings between subjects and for the purposes of this Act a proceeding by petition of right shall be deemed to be commenced on the date on which the petition is presented:

Provided that this Act shall not apply to any proceedings by the Crown for the recovery of any tax or duty or interest thereon or to any forfeiture proceedings under the Customs Acts or the Acts relating to duties of excise or to any proceedings in respect of the forfeiture of a ship.

(2) For the purposes of this section, proceedings by or against the Crown shall include proceedings by or against His Majesty in right of the Duchy of Lancaster, and proceedings by or against any Government Department or any officer of the Crown as such or any person acting on behalf of the Crown, and shall also include proceedings by or against the Duke of Cornwall.

(3) For the purpose of the provisions of this Act relating to actions for the recovery of land and advowsons, references to the Crown shall include references to His Majesty in right of the Duchy of Lancaster, and the said provisions shall apply to lands and advowsons forming part of the possessions of the Duchy of Cornwall as if for the references to the Crown there were substituted references to the Duke of Cornwall as defined in the Duchy of Cornwall Management Act, 1863. 26 & 27 Vict.
c. 49

(4) Nothing in this Act shall affect the prerogative right of His Majesty (whether in right of the Crown or of the Duchy of Lancaster) or of the Duke of Cornwall to any gold or silver mine.

31.—(1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby ^{Interpretation} respectively assigned to them:—

“Action” includes any proceeding in a court of law, including an ecclesiastical court;

“Duty” includes any debt due to His Majesty under section sixteen of the Tithe Act, 1936, and a royalties 26 Geo. 5. &
1 Edw. 8.
c. 43 welfare levy within the meaning of Part III of the Mining Industry Act, 1926; 16 & 17
Geo. 5. c. 28

“Foreshore” means the shore and bed of the sea and of any tidal water, below the line of the medium high tide between the spring tides and the neap tides;

“Land” includes corporeal hereditaments, tithes (except tithes belonging to a spiritual or eleemosynary corporation sole) and rentcharges, and any legal or equitable estate or interest therein, including an interest in the proceeds of the sale of land held upon trust for sale, but save as aforesaid does not include any incorporeal hereditament;

9 & 10 Vict.
c. 93

“Parent” has the same meaning as in the Fatal Accidents Act, 1846, as extended by section two of the Law Reform (Miscellaneous Provisions) Act, 1934;

24 & 25
Geo. 5. c. 41

“Personal estate” and “personal property” do not include chattels real;

“Rent” includes a rentcharge and a rents-service;

“Rentcharge” means any annuity or periodical sum of money charged upon or payable out of land, except a modus, composition or tithe rentcharge belonging to a spiritual or eleemosynary corporation sole or a rent service or interest on a mortgage on land;

“Settled land”, “statutory owner” and “tenant for life” have the same meanings respectively as in the Settled Land Act, 1925;

“Ship” includes every description of vessel used in navigation not propelled by oars;

15 & 16
Geo. 5. c. 19

“Trust” and “trustee” have the same meanings respectively as in the Trustee Act, 1925;

15 & 16
Geo. 5. c. 20

“Trust for sale” has the same meaning as in the Law of Property Act, 1925.

(2) For the purposes of this Act, a person shall be deemed to be under a disability while he is an infant, or of unsound mind, or a convict subject to the operation of the Forfeiture Act, 1870, in whose case no administrator or curator has been appointed under that Act.

33 & 34 Vict.
c. 23

(3) For the purposes of the last foregoing subsection but without prejudice to the generality thereof, a person shall be conclusively presumed to be of unsound mind—

20 & 21
Geo. 5. c. 23

(a) while he is detained in pursuance of any enactment authorising the detention of persons of unsound mind or criminal lunatics, or is receiving treatment as a voluntary patient under the Mental Treatment Act, 1930, being treatment which follows without any interval such detention as aforesaid; and

(b) while he is detained under any provision of the Mental Deficiency Acts, 1913 to 1938.

(4) A person shall be deemed to claim through another person, if he became entitled by, through, under, or by the act of that other person to the right claimed, and any person whose estate or interest might have been barred by a person

entitled to an entailed interest in possession shall be deemed to claim through the person so entitled:

Provided that a person becoming entitled to any estate or interest by virtue of a special power of appointment shall not be deemed to claim through the appointor.

(5) References in this Act to a right of action to recover land shall include references to a right to enter into possession of the land or, in the case of rentcharges and tithes, to distrain for arrears of rent or tithe, and references to the bringing of such an action shall include references to the making of such an entry or distress.

(6) References in this Act to the possession of land shall, in the case of tithes and rentcharges, be construed as references to the receipt of the tithe or rent, and references to the date of dispossession or discontinuance of possession of land shall, in the case of rentcharges, be construed as references to the date of the last receipt of rent.

(7) In Part II of this Act references to a right of action shall include references to a cause of action and to a right to receive money secured by a mortgage or charge on any property or to recover proceeds of the sale of land, and to a right to receive a share or interest in the personal estate of a deceased person; and references to the date of the accrual of a right of action shall—

- (a) in the case of an action for an account, be construed as references to the date on which the matter arose in respect of which an account is claimed;
- (b) in the case of an action upon a judgment, be construed as references to the date on which the judgment became enforceable;
- (c) in the case of an action to recover arrears of rent, dower or interest, or damages in respect thereof, be construed as references to the date on which the rent, dower or interest became due.

32. This Act shall not apply to any action or arbitration for which a period of limitation is prescribed by any other enactment, or to any action or arbitration to which the Crown is a party and for which, if it were between subjects, a period of limitation would be prescribed by any other enactment: Saving for
other
limitation
enactments

Provided that section twenty-one of this Act (which relates to actions against public authorities) shall apply to any action for which a longer period of limitation is prescribed by any such other enactment.

Provisions
as to actions
already
barred and
pending
actions

33. Nothing in this Act shall—

- (a) enable any action to be brought which was barred before the commencement of this Act by an enactment repealed by this Act, except in so far as the cause of action or right of action may be revived by an acknowledgment or part payment made in accordance with the provisions of this Act; or
- (b) affect any action or arbitration commenced before the commencement of this Act or the title to any property which is the subject of any such action or arbitration.

Short title,
commence-
ment, extent
and repeal

34.—(1) This Act may be cited as the Limitation Act, 1939.

(2) This Act shall come into operation on the first day of July, nineteen hundred and forty.

(3) This Act shall not extend to Scotland or Northern Ireland.

(4) The enactments mentioned in the Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.

SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter	Title or Short Title	Extent of Repeal
31 Eliz. c. 5.	An Act concerning Informers.	Section five.
21 Jas. 1. c. 16.	The Limitation Act, 1623.	Sections three, four and seven.
4 & 5 Ann. c. 3.	An Act for the amendment of the Law and the better Advancement of Justice.	Sections seventeen to nineteen.
9 Geo. 3. c. 16.	The Crown Suits Act, 1769.	The whole Act.
9 Geo. 4. c. 14.	The Statute of Frauds Amendment Act, 1828.	Sections one, three, four and eight.
3 & 4 Will. 4. c. 27.	The Real Property Limitation Act, 1833.	The whole Act.
3 & 4 Will. 4. c. 42.	The Civil Procedure Act, 1833.	Sections three to seven.
7 Will. 4 & 1 Vict. c. 28.	The Real Property Limitation Act, 1837.	The whole Act.
5 & 6 Vict. c. 97.	The Limitation of Actions and Costs Act, 1842.	Section five.
6 & 7 Vict. c. 54.	The Limitations of Actions Act, 1843.	Section three.
7 & 8 Vict. c. 105.	An Act to confirm and enfranchise the estates of the conventional tenants of the ancient assessionable manors of the Duchy of Cornwall, and to quiet titles within the county of Cornwall as against the Duchy, and for other purposes.	Sections seventy-one to eighty.
19 & 20 Vict. c. 97.	The Mercantile Law Amendment Act, 1856.	Sections nine to fourteen.
23 & 24 Vict. c. 53.	An Act for the limitation of actions and suits by the Duke of Cornwall in relation to real property, and for authorising certain leases of possessions of the Duchy.	Sections one and two.
24 & 25 Vict. c. 62.	The Crown Suits Act, 1861.	The whole Act.
36 & 37 Vict. c. 66.	The Supreme Court of Judicature Act, 1873.	Subsection two of section twenty-five.
37 & 38 Vict. c. 57.	The Real Property Limitation Act, 1874.	The whole Act.
51 & 52 Vict. c. 59.	The Trustee Act, 1888.	The whole Act.
56 & 57 Vict. c. 61.	The Public Authorities Protection Act, 1893.	Paragraph (a) of section one, except so far as it relates to criminal proceedings.

Session and Chapter	Short Title	Extent of Repeal
15 & 16 Geo. 5. c. 23.	The Administration of Estates Act, 1925.	In subsection (2) of section thirty the words "within the same time and".
17 & 18 Geo. 5. c. 21	The Moneylenders Act, 1927.	Paragraph (<i>d</i>) of subsection (1) of section thirteen and the word "and" at the end of paragraph (<i>c</i>) of that subsection.
24 & 25 Geo. 5. c. 14.	The Arbitration Act, 1934.	In section sixteen, subsections (1) and (2), in subsection (4) the words "of this section and for the purpose of the statutes of limitations as applying to arbitrations and," and subsections (7) and (8).

THE ENGLISH LEGISLATION

II LAW REFORM (LIMITATION OF ACTIONS, &c.) ACT, 1954

2 & 3 Eliz. 2, c. 36

1. The following enactments (being enactments providing special periods of limitation for, or other privileges for the defendants in, legal proceedings against public authorities or persons acting in pursuance or execution or intended execution of Acts), that is to say—

Repeal of
Public
Authorities
Protection
Act, 1893,
and other
enactments

- (a) the Public Authorities Protection Act, 1893;
- (b) section twenty-one of the Limitation Act, 1939;
- (c) subsections (1) and (2) of section forty-nine of the Coal Industry Nationalisation Act, 1946, section seventeen of the New Towns Act, 1946, section eleven of the Transport Act, 1947, section twelve of the Electricity Act, 1947, section fourteen of the Gas Act, 1948, and section three of the Air Corporations Act, 1953; and
- (d) subsections (1) and (2) of section one hundred and seventy of the Army Act (both as originally enacted and as extended by subsection (5) of section thirteen of the Visiting Forces Act, 1952) and subsections (1) and (2) of section one hundred and seventy of the Air Force Act,

are hereby repealed.

2.—(1) At the end of subsection (1) of section two of the Limitation Act, 1939 (which subsection provides, amongst other things, that there shall be a limitation period of six years for actions founded on simple contract or on tort) the following proviso shall be inserted—

Amendment
of Limitation
Act, 1939,
as respects
personal
injury
actions

“Provided that, in the case of actions for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under a statute or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to

any person, this subsection shall have effect as if for the reference to six years there were substituted a reference to three years."

(2) At the end of section twenty-two of the Limitation Act, 1939 (which, in certain cases where the person to whom a right of action has accrued was under a disability, extends the period of limitation until six years from the date when the disability ceased or the person died, whichever event first occurred) there shall be added the following subsection—

"(2) In the case of actions for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under a statute or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to any person,—

(a) the preceding provisions of this section shall have effect as if for the words 'six years' there were substituted the words 'three years'; and

(b) this section shall not apply unless the plaintiff proves that the person under the disability was not, at the time when the right of action accrued to him, in the custody of a parent."

(3) In subsection (1) of section thirty-one of the Limitation Act, 1939, after the definitions of "personal estate" and "personal property" there shall be inserted the following definition—

" 'personal injuries' includes any disease and any impairment of a person's physical or mental condition".

Amendment
of Fatal
Accidents
Act, 1846

3. In section three of the Fatal Accidents Act, 1846 (which provides that actions under that Act shall be commenced within twelve calendar months after the death of the deceased person) for the words "twelve calendar months" there shall be substituted the words "three years".

Amendment
as to
proceedings
on causes of
action
surviving
against
estates of
deceased
persons

4. In section one of the Law Reform (Miscellaneous Provisions) Act, 1934 (which provides, amongst other things, for the survival, with certain exceptions, of all causes of action against a deceased person's estate), so much of subsection (3) as provides that proceedings in respect of causes of action in tort which by virtue of that section survive against the estate of a deceased person are not to be maintainable unless the cause of action arose not earlier than six months before the death of the deceased is hereby repealed.

5.—(1) This Act shall bind the Crown.

Application
to the
Crown

(2) Section eight of the Maritime Conventions Act, 1911 (which relates to the limitation of actions in respect of damage or loss caused to or by vessels and the limitation of actions in respect of salvage services) shall apply in the case of all Her Majesty's ships as it applies in the case of other ships, and accordingly, in subsection (1) of section thirty of the Crown Proceedings Act, 1947, the words "except in the case of proceedings in respect of any alleged fault of a ship of war or a ship for the time being appropriated to the service of the armed forces of the Crown or to the service of the Post Office" are hereby repealed.

(3) No proceedings shall lie against the Crown under subsection (2) of section nine of the Crown Proceedings Act, 1947 (which authorises the taking of proceedings against the Crown in respect of loss of or damage to registered inland postal packets) unless the proceedings are begun within the twelve months beginning with the date on which the packet in question was posted.

(4) In the application of this section to Northern Ireland, the references therein to subsection (1) of section thirty and subsection (2) of section nine of the Crown Proceedings Act, 1947, shall be construed as references to those subsections as they apply in Northern Ireland in relation to Her Majesty's Government in the United Kingdom.

6.—(1) No action of damages where the damages claimed consist of or include damages or solatium in respect of personal injuries to any person shall be brought in Scotland against any person unless it is commenced—

Further
provisions as
to limitation
of actions in
Scotland

- (a) in the case of an action brought by or on behalf of a person in respect of injuries sustained by that person, before the expiration of three years from the date of the act, neglect or default giving rise to the action or, where such act, neglect or default was a continuing one, from the date on which the act, neglect or default ceased;
- (b) in the case of an action brought by or on behalf of a person to whom a right of action has accrued on the death of another person in consequence of injuries sustained by that other person, before the expiration of three years from the date of that death:

Provided that for the purposes of paragraph (b) of this subsection a right of action shall be deemed not to have accrued to a person on the death of another person by whom injuries have been sustained if that other person or someone on his behalf was not, immediately before his death, himself entitled to bring an action in respect of the injuries.

(2) If on the date when any right of action accrued for which a period of limitation is prescribed by the foregoing subsection the person to whom it accrued was under legal disability by reason of pupilarity or minority or of unsoundness of mind and was not in the custody of a parent, the action may be brought at any time before the expiration of three years from the date when the person ceased to be under disability, notwithstanding that the period of limitation has expired.

For the purposes of this subsection "parent" includes a step-parent and a grand-parent and in deducing any relationship an illegitimate person and a person adopted in pursuance of any enactment shall be treated as the legitimate child of his mother or, as the case may be, of his adoptor.

(3) In this section the expression "personal injuries" includes any disease and any impairment of a person's physical or mental condition.

(4) In addition to the enactments specified in section one of this Act, the following enactments (being enactments providing special periods of limitation in Scotland for certain legal proceedings against public authorities) that is to say—

- (a) section four of the Malicious Damage Act, 1812, and section three of the Malicious Damage (Scotland) Act, 1816, in so far as they limit the period within which proceedings may be commenced;
- (b) section fifteen of the Riotous Assemblies (Scotland) Act, 1822;
- (c) section one hundred and sixty-six of the Public Health (Scotland) Act, 1897, in so far as it limits the period within which proceedings may be commenced; and
- (d) section seventy of the National Health Service (Scotland) Act, 1947, in so far as it limits the period within which proceedings may be commenced,

are hereby repealed.

Transitional
provisions

7.—(1) The time for bringing proceedings in respect of a cause of action which arose before the passing of this Act shall, if it has not then already expired, expire at the time when it would have expired apart from the provisions of this Act or at the time when it would have expired if all the provisions of this Act had at all material times been in force, whichever is the later.

(2) The repeal effected by this Act in subsection (3) of section one of the Law Reform (Miscellaneous Provisions) Act, 1934, shall, in the case of a person dying after the passing of this Act, apply as well in relation to causes of action arising before, as in relation to causes of action arising after, the passing thereof.

(3) Save as aforesaid, nothing in this Act shall affect any action or proceeding if the cause of action arose before the passing thereof.

S.—(1) This Act may be cited as the Law Reform (Limitation of Actions, &c.) Act, 1954. Short title,
extent and
repeals

(2) Section five of this Act, and so much of this Act as repeals provisions of the Army Act and the Air Force Act, extend to Northern Ireland, but, save as aforesaid, this Act extends to Great Britain only.

(3) The enactments mentioned in the Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.

Section 8.

SCHEDULE

ENACTMENTS REPEALED

Session and Chapter	Short Title	Extent of Repeal
52 Geo. 3. c. 130.	The Malicious Damage Act, 1812.	In section four, from the words "Provided also that" to the words "after such offence shall be committed".
56 Geo. 3. c. 125.	The Malicious Damage (Scotland) Act, 1816.	In section three, from the words "Provided also that" to the words "after such offence shall be committed."
3 Geo. 4. c. 33.	The Riotous Assemblies (Scotland) Act, 1822.	Section fifteen.
44 & 45 Vict. c. 58.	The Army Act.	Subsections (1) and (2) of section one hundred and seventy.
56 & 57 Vict. c. 61.	The Public Authorities Protection Act, 1893.	The whole Act.
60 & 61 Vict. c. 38.	The Public Health (Scotland) Act, 1897.	In section one hundred and sixty-six, from the words "and every action" to the words "shall have arisen".
7 & 8 Geo. 5.	The Air Force Act.	Subsections (1) and (2) of section one hundred and seventy.
24 & 25 Geo. 5. c. 41.	The Law Reform (Miscellaneous Provisions) Act, 1934.	In paragraph (b) of subsection (3) of section one, the words "the cause of action arose not earlier than six months before his death and".
2 & 3 Geo. 6. c. 21.	The Limitation Act, 1939.	Section twenty-one; in section twenty-two, the words "or in the case of actions to which the last foregoing section applies, one year" and paragraph (d) of the proviso; and the proviso to section thirty-two.
9 & 10 Geo. 6. c. 59.	The Coal Industry Nationalisation Act, 1946.	Subsections (1) and (2) of section forty-nine.
9 & 10 Geo. 6. c. 68.	The New Towns Act, 1946.	Section seventeen.
10 & 11 Geo. 6. c. 27.	The National Health Service (Scotland) Act, 1947.	In section seventy, paragraph (b).
10 & 11 Geo. 6. c. 44.	The Crown Proceedings Act, 1947.	In subsection (1) of section thirty, from the words "except in the case of" to the words "the service of the Post Office", subsection (2) of that section, and section forty-eight.
10 & 11 Geo. 6. c. 49.	The Transport Act, 1947.	Section eleven.
10 & 11 Geo. 6. c. 54.	The Electricity Act, 1947.	Section twelve.
11 & 12 Geo. 6. c. 67.	The Gas Act, 1948.	Section fourteen.
2 & 3 Eliz. 2. c. 7.	The Air Corporations Act, 1953.	Section three.

Table of Statutes referred to in this Act.

Short Title	Session and Chapter
Malicious Damage Act, 1812	52 Geo. 3. c. 130.
Malicious Damage (Scotland) Act, 1816	56 Geo. 3. c. 125.
Riotous Assemblies (Scotland) Act, 1822	3 Geo. 4. c. 33.
Fatal Accidents Act, 1846	9 & 10 Vict. c. 93.
Army Act	44 & 45 Vict. c. 58.
Public Authorities Protection Act, 1893	56 & 57 Vict. c. 61.
Public Health (Scotland) Act, 1897	60 & 61 Vict. c. 38.
Maritime Conventions Act, 1911	1 & 2 Geo. 5. c. 57.
Air Force Act	7 & 8 Geo. 5.
Law Reform (Miscellaneous Provisions) Act, 1934	24 & 25 Geo. 5. c. 41.
Limitation Act, 1939	2 & 3 Geo. 6. c. 21.
Coal Industry Nationalisation Act, 1946	9 & 10 Geo. 6. c. 59.
New Towns Act, 1946	9 & 10 Geo. 6. c. 68.
National Health Service (Scotland) Act, 1947	10 & 11 Geo. 6. c. 27.
Crown Proceedings Act, 1947	10 & 11 Geo. 6. c. 44.
Transport Act, 1947	10 & 11 Geo. 6. c. 49.
Electricity Act, 1947	10 & 11 Geo. 6. c. 54.
Gas Act, 1948	11 & 12 Geo. 6. c. 67.
Visiting Forces Act, 1952	15 & 16 Geo. 6. & 1 Eliz. 2. c. 67.
Air Corporations Act, 1953	2 & 3 Eliz. c. 7.

THE ENGLISH LEGISLATION

III LIMITATION ACT, 1963

c. 47

PART I

AMENDMENT OF LAW OF ENGLAND AND WALES

1.—(1) Section 2 (1) of the Limitation Act 1939 (which, in ^{Extension of time-limit for certain actions} the case of certain actions, imposes a time-limit of three years for bringing the action) shall not afford any defence to an action to which this section applies, in so far as the action relates to any cause of action in respect of which—

- (a) the court has, whether before or after the commencement of the action, granted leave for the purposes of this section, and
- (b) the requirements of subsection (3) of this section are fulfilled.

(2) This section applies to any action for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under a statute or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to the plaintiff or any other person.

(3) The requirements of this subsection are fulfilled in relation to a cause of action if it is proved that the material facts relating to that cause of action were or included facts of a decisive character which were at all times outside the knowledge (actual or constructive) of the plaintiff until a date which—

- (a) either was after the end of the three-year period relating to that cause of action or was not earlier than twelve months before the end of that period, and
- (b) in either case, was a date not earlier than twelve months before the date on which the action was brought.

(4) Nothing in this section shall be construed as excluding or otherwise affecting—

- (a) any defence which, in any action to which this section applies, may be available by virtue of any enactment other than section 2 (1) of the Limitation Act 1939 (whether it is an enactment imposing a period of limitation or not) or by virtue of any rule of law or equity, or
- (b) the operation of any enactment or rule of law or equity which, apart from this section, would enable such an action to be brought after the end of the period of three years from the date on which the cause of action accrued.

Application
for leave of
court

2.—(1) Any application for the leave of the court for the purposes of the preceding section shall be made *ex parte*, except in so far as rules of court may otherwise provide in relation to applications which are made after the commencement of a relevant action.

(2) Where such an application is made before the commencement of any relevant action, the court shall grant leave in respect of any cause of action to which the application relates if, but only if, on evidence adduced by or on behalf of the plaintiff, it appears to the court that, if such an action were brought forthwith and the like evidence were adduced in that action, that evidence would, in the absence of any evidence to the contrary, be sufficient—

- (a) to establish that cause of action, apart from any defence under section 2 (1) of the Limitation Act 1939, and
- (b) to fulfil the requirements of subsection (3) of the preceding section in relation to that cause of action.

(3) Where such an application is made after the commencement of a relevant action, the court shall grant leave in respect of any cause of action to which the application relates if, but only if, on evidence adduced by or on behalf of the plaintiff, it appears to the court that, if the like evidence were adduced in that action, that evidence would, in the absence of any evidence to the contrary, be sufficient—

- (a) to establish that cause of action, apart from any defence under section 2 (1) of the Limitation Act 1939, and
- (b) to fulfil the requirements of subsection (3) of the preceding section in relation to that cause of action.

and it also appears to the court that, until after the commencement of that action, it was outside the knowledge

(actual or constructive) of the plaintiff that the matters constituting that cause of action had occurred on such a date as (apart from the preceding section) to afford a defence under section 2 (1) of the Limitation Act 1939.

(4) No appeal shall lie from any decision of the Court of Appeal on an appeal against a decision on an application under this section.

(5) In this section "relevant action", in relation to an application for the leave of the court, means any action in connection with which the leave sought by the application is required.

3.—(1) In relation to any action to which section 1 of this Act applies, being an action in respect of one or more causes of action surviving for the benefit of the estate of a deceased person by virtue of section 1 of the Law Reform (Miscellaneous Provisions) Act 1934, subsections (1), (3) and (4) of section 1 of this Act and the last preceding section shall have effect subject to the provisions of subsections (4) and (5) of this section.

Application
of ss. 1 and 2
to actions
after death
of injured
person

(2) Subsections (1), (3) and (4) of section 1 of this Act and the last preceding section shall have effect, subject to the provisions of subsections (4) to (6) of this section, in relation to an action brought by virtue of the Fatal Accidents Acts for damages in respect of a person's death, as they have effect in relation to an action to which section 1 of this Act applies.

(3) In the following provisions of this section, and in sections 1 and 2 of this Act as modified by those provisions, "the deceased" means the person referred to in subsection (1) or subsection (2) of this section, as the case may be.

(4) Section 1 (1) of this Act shall not have effect in relation to any action falling within subsection (1) or subsection (2) of this section unless the action is brought before the end of the period of twelve months from the date on which the deceased died.

(5) For the purposes of the application of subsection (3) of section 1 of this Act to an action falling within subsection (1) or subsection (2) of this section,—

- (a) any reference in the said subsection (3) to the plaintiff shall be construed as a reference to the deceased, and
- (b) the requirements of that subsection shall be taken to be fulfilled in relation to a cause of action if either the matters specified in that subsection (as modified by the preceding paragraph) are proved or it is proved that the material facts relating to that cause of

action were or included facts of a decisive character which at all times until his death were outside the knowledge (actual or constructive) of the deceased;

and any reference in this Part of this Act to the requirements of the said subsection (3) shall, in relation to an action falling within subsection (1) or subsection (2) of this section, be construed as a reference to the requirements of the said subsection (3) as modified by this subsection.

(6) In the application of this Part of this Act to an action brought by virtue of the Fatal Accidents Acts,—

- (a) any reference to a cause of action to which an action relates shall be construed as a reference to a cause of action in respect of which it is claimed that the deceased could (but for his death) have maintained an action and recovered damages, and
- (b) any reference to establishing a cause of action shall be construed as a reference to establishing that the deceased could (but for his death) have maintained an action and recovered damages in respect thereof.

Time-limit
for claiming
contribution
between
tortfeasors

4.—(1) Where under section 6 of the Law Reform (Married Women and Tortfeasors) Act 1935 a tortfeasor (in this section referred to as “the first tortfeasor”) becomes entitled after the passing of this Act to a right to recover contribution in respect of any damage from another tortfeasor, no action to recover contribution by virtue of that right shall (subject to subsection (3) of this section) be brought after the end of the period of two years from the date on which that right accrued to the first tortfeasor.

(2) For the purposes of this section the date on which a right to recover contribution in respect of any damage accrues to a tortfeasor (in this subsection referred to as “the relevant date”) shall be ascertained as follows, that is to say—

- (a) if the tortfeasor is held liable in respect of that damage by a judgment given in any civil proceedings, or an award made on any arbitration, the relevant date shall be the date on which the judgment is given, or the date of the award, as the case may be;
- (b) if, in any case not falling within the preceding paragraph, the tortfeasor admits liability in favour of one or more persons in respect of that damage, the relevant date shall be the earliest date on which the amount to be paid by him in discharge of that liability is agreed by or on behalf of the tortfeasor and that person, or each of those persons, as the case may be;

and for the purposes of this subsection no account shall be taken of any judgment or award given or made on appeal in so far as it varies the amount of damages awarded against the tortfeasor.

(3) Sections 22 (1) and 26 of the Limitation Act 1939 (which make provision for cases of disability, fraud and mistake) shall each have effect as if any reference therein to that Act included a reference to subsection (1) of this section, and section 2 (1) of the Limitation (Enemies and War Prisoners) Act 1945 shall be amended by adding at the end of the definition of "statute of limitation" the words "subsection (1) of section four of the Limitation Act 1963":

Provided that the said section 22 (1) shall not apply to any action by virtue of this subsection unless the plaintiff proves that the person under the disability was not, at the time when the right to recover contribution accrued to him, in the custody of a parent, and, where it so applies, shall have effect as if for the words "six years" there were substituted the words "two years".

(4) In relation to torts falling within Article 29 in Schedule 1 to the Carriage by Air Act 1961, the preceding subsections shall have effect in substitution for the limitation imposed by subsection (2) of section 5 of that Act; and accordingly in that subsection the words from "but no action" onwards are hereby repealed:

Provided that this subsection shall not affect any action for a contribution where before the passing of this Act judgment has been obtained against the person seeking to obtain the contribution.

(5) In this section references to an action, to section 22 (1) or section 26 of the Limitation Act 1939, and to subsection (2) of section 5 of the Carriage by Air Act 1961, shall be construed as including references respectively to an arbitration, to the said section 22 (1) or, as the case may be, section 26 as applied to arbitrations by section 27 (1) of the Limitation Act 1939, and to subsection (2) as extended by subsection (3) of section 5 of the Carriage by Air Act 1961; and subsections (3) to (7) of section 27 of the Limitation Act 1939 (which relate to the application of that Act to arbitrations) shall apply for the purposes of this section.

5. Section 28 of the Limitation Act 1939 (which relates to ^{Supple-}claims by way of set-off or counterclaim) and section 30 of ^{mentary}provisions that Act (which relates to proceedings by or against the Crown) shall apply for the purposes of this Part of this Act as they apply for the purposes of that Act.

Transitional
provisions

6.—(1) Subject to the following provisions of this section, the provisions of this Part of this Act (other than section 4 thereof) shall have effect in relation to causes of action which accrued before, as well as causes of action which accrue after, the passing of this Act, and shall have effect in relation to any cause of action which accrued before the passing of this Act notwithstanding that an action in respect thereof has been commenced and is pending at the passing of this Act.

(2) In the application of section 2 of this Act to an action which is pending at the passing of this Act, subsection (3) of that section shall have effect with the omission of the words from “and it also appears” to the end of the subsection.

(3) For the purposes of this section an action shall not be taken to be pending at any time after a final order or judgment has been made or given therein, notwithstanding that an appeal is pending or that the time for appealing has not expired; and accordingly section 1 of this Act shall not have effect in relation to a cause of action in respect of which a final order or judgment has been made or given before the passing of this Act.

Interpre-
tation of
Part I

7.—(1) In this Part of this Act “the court”, in relation to an action, means the court in which the action has been, or is intended to be, brought, and “the Fatal Accidents Acts” means the Fatal Accidents Act 1846 to 1959.

(2) In this Part of this Act any reference to the three-year period relating to a cause of action is a reference to the period of three years from the date on which that cause of action accrued:

Provided that—

- (a) in relation to any cause of action in respect of which, by virtue of section 22 of the Limitation Act 1939 (which relates to persons under a disability), an action could have been brought after the end of the period of three years from the date on which that cause of action accrued, any reference in this Part of this Act to the three-year period relating to that cause of action shall be construed as a reference to the period up to the end of which an action could, by virtue of that section, have been brought in respect thereof;
- (b) in relation to a cause of action in respect of which, by virtue of section 26 of the Limitation Act 1939 (which relates to cases of fraud or mistake), the period of limitation did not begin to run until a date after the cause of action accrued, any reference in

this Part of this Act to the three-year period relating to that cause of action shall be construed as a reference to the period of three years from the date on which, by virtue of that section, the period of limitation began to run.

(3) In this Part of this Act any reference to the material facts relating to a cause of action is a reference to any one or more of the following, that is to say—

- (a) the fact that personal injuries resulted from the negligence, nuisance or breach of duty constituting that cause of action;
- (b) the nature or extent of the personal injuries resulting from that negligence, nuisance or breach of duty;
- (c) the fact that the personal injuries so resulting were attributable to that negligence, nuisance or breach of duty, or the extent to which any of those personal injuries were so attributable.

(4) For the purposes of this Part of this Act any of the material facts relating to a cause of action shall be taken, at any particular time, to have been facts of a decisive character if they were facts which a reasonable person, knowing those facts and having obtained appropriate advice with respect to them, would have regarded at that time as determining, in relation to that cause of action, that (apart from any defence under section 2 (1) of the Limitation Act 1939) an action would have a reasonable prospect of succeeding and of resulting in the award of damages sufficient to justify the bringing of the action.

(5) Subject to the next following subsection, for the purposes of this Part of this Act a fact shall, at any time, be taken to have been outside the knowledge (actual or constructive) of a person if, but only if,—

- (a) he did not then know that fact;
- (b) in so far as that fact was capable of being ascertained by him, he had taken all such action (if any) as it was reasonable for him to have taken before that time for the purpose of ascertaining it; and
- (c) in so far as there existed, and were known to him, circumstances from which, with appropriate advice, that fact might have been ascertained or inferred, he had taken all such action (if any) as it was reasonable for him to have taken before that time for the purpose of obtaining appropriate advice with respect to those circumstances.

(6) In the application of the last preceding subsection to a person at a time when he was under a disability and was in the custody of a parent, any reference to that person in paragraph (a), paragraph (b) or paragraph (c) of that subsection shall be construed as a reference to that parent.

(7) Subject to the preceding provisions of this section, expressions used in this Part of this Act and in the Limitation Act 1939 have the same meanings in this Part of this Act as in that Act.

(8) In this section "appropriate advice", in relation to any fact or circumstances, means the advice of competent persons qualified, in their respective spheres, to advise on the medical, legal and other aspects of that fact or those circumstances, as the case may be.

PART II

AMENDMENT OF LAW OF SCOTLAND

Extension of
time-limit
for certain
actions

8.—(1) Section 6 (1) of the Law Reform (Limitation of Actions, etc.) Act 1954 (which, in the case of certain actions, imposes a time-limit of three years for bringing the action) shall not afford any defence to an action to which this section applies, in so far as the action relates to any right of action in respect of which the requirements of subsection (3) of this section are fulfilled.

(2) This section applies to any action of damages in Scotland where the damages claimed consist of, or include, damages or solatium in respect of personal injuries sustained by the pursuer or any other person.

(3) The requirements of this subsection are fulfilled in relation to a right of action if it is proved that the material facts relating to that right of action were or included facts of a decisive character which were at all times outside the knowledge (actual or constructive) of the pursuer until a date which—

(a) either was after the end of the three-year period relating to that right of action or was not earlier than twelve months before the end of that period, and

(b) in either case, was a date not earlier than twelve months before the date on which the action was brought.

(4) Nothing in this section shall be construed as excluding or otherwise affecting—

(a) any defence which, in any action to which this section applies, may be available by virtue of any enact-

ment other than section 6 (1) of the Law Reform (Limitation of Actions, etc.) Act 1954 (whether it is an enactment imposing a period of limitation or not) or by virtue of any rule of law, or

- (b) the operation of any enactment or rule of law which, apart from this section, would enable such an action to be brought after the end of the period of three years from the date on which the right of action accrued.

9.—(1) In relation to any action to which section 8 of this Act applies, being an action brought by or on behalf of a person to whom a right of action has (apart from subsection (4) of this section) accrued on the death of another person (in this section referred to as “the deceased”) in consequence of personal injuries sustained by the deceased, the last preceding section shall have effect subject to the following provisions of this section.

(2) Subsection (1) of the last preceding section shall not have effect in relation to any action falling within this section unless the action is brought before the end of the period of twelve months from the date on which the deceased died.

(3) For the purposes of the application of subsection (3) of the last preceding section to an action falling within this section—

- (a) any reference in the said subsection (3) to the pursuer shall be construed as a reference to the deceased, and
- (b) the requirements of that subsection shall be taken to be fulfilled in relation to a right of action if either the matters specified in that subsection (as modified by the preceding paragraph) are proved or it is proved that the material facts relating to that right of action were or included facts of a decisive character which at all times until his death were outside the knowledge (actual or constructive) of the deceased;

and any reference in subsection (1) of that section to the requirements of the said subsection (3) shall, in relation to an action falling within this section, be construed as a reference to the requirements of the said subsection (3) as modified by this subsection.

(4) In relation to an action falling within this section—

- (a) the death of the deceased shall not, and
- (b) any circumstances falling within the next following subsection shall,

be regarded for the purposes of this Part of this Act as constituting a right of action.

(5) The circumstances referred to in paragraph (b) of the last preceding subsection include any circumstances which would have constituted a right of action in relation to an action brought by the deceased before his death in respect of the personal injuries which caused his death.

Time-limit
for claiming
contribution
between
wrongdoers

10.—(1) Where under section 3 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940 a person (in this section referred to as “the first wrongdoer”) becomes entitled after the passing of this Act to a right to recover from another person a contribution in respect of any damages or expenses, no action to recover a contribution by virtue of that right shall be brought after the end of the period of two years from the date on which that right accrued to the first wrongdoer.

(2) Section 6 (2) of the Law Reform (Limitation of Actions, etc.) Act 1954 (which modifies the time-limit of three years for bringing an action in the case of persons under legal disability) shall have effect as if any reference therein to subsection (1) of that section included a reference to subsection (1) of this section:

Provided that in relation to any action to which the said section 6 (2) applies by virtue of this subsection it shall have effect as if for the words “three years” therein there were substituted the words “two years”.

(3) The preceding provisions of this section, and the provisions of section 6 (2) of the said Act of 1954 as extended by the last preceding subsection, shall have effect in relation to an arbitration to recover from a carrier a contribution in respect of damages to which Article 29 in Schedule 1 to the Carriage by Air Act 1961 applies, as they have effect in relation to an action for that purpose.

(4) For the purposes of this section an arbitration shall be deemed to be commenced when one party to the arbitration serves on the other party or parties a notice requiring him or them to appoint an arbiter or to agree to the appointment of an arbiter, or, where the arbitration agreement provides that the reference shall be to a person named or designated in the agreement, requiring him or them to submit the dispute to the person so named or designated.

(5) In relation to wrongful acts or omissions falling within the said Article 29 this section shall have effect in substitution for the limitation imposed by section 5 (2) of the said Act of 1961; and accordingly the following provisions of that Act are hereby repealed, that is to say, in subsection (2) of section 5, the words from “but no action” to the end of the subsection; and, in paragraph (a) of section 11, heads (i) and (iii).

(6) Nothing in this section shall affect any action for a contribution where, before the passing of this Act, decree has been pronounced against the person seeking to obtain the contribution; and in this subsection "action" includes "arbitration" and "decree" includes "decree-arbitral".

11. Section 1 (1) of the Limitation (Enemies and War Prisoners) Act 1945 as set out in section 4 (a) of that Act (which provides for the suspension of the limitation period for bringing an action where a party was an enemy or was detained in enemy territory) shall be amended by adding at the end of the said section 1 (1) the words "section six of the Law Reform (Limitation of Actions, etc.) Act 1954, subsection (1) of section ten of the Limitation Act 1963".

Amendment
of s. 1 (1) of
Limitation
(Enemies
and War
Prisoners)
Act 1945

12.—(1) Subject to the following provisions of this section, the provisions of this Part of this Act (other than section 10 thereof and section 11 so far as it relates to the said section 10) shall have effect in relation to rights of action which accrued before, as well as rights of action which accrue after, the passing of this Act, and shall have effect in relation to any right of action which accrued before the passing of this Act notwithstanding that an action in respect thereof has been commenced and is pending at the passing of this Act.

Transitional
provisions

(2) For the purposes of this section an action shall not be taken to be pending at any time after a final order or decree has been made or pronounced therein, notwithstanding that an appeal is pending or that the time for appealing has not expired; and accordingly section 8 of this Act shall not have effect in relation to a right of action in respect of which a final order or decree has been made or pronounced before the passing of this Act.

13.—(1) Notwithstanding anything in any enactment relating to the trial by jury of actions, whether in the Court of Session or the sheriff court, no action relating to a right of action in respect of which the operation of section 6 (1) of the Law Reform (Limitation of Actions, etc.) Act 1954 is precluded by virtue of section 8 (1) of this Act shall be tried by jury.

Supple-
mentary
provisions
relating to
and interpre-
tation of,
Part II

(2) Any reference in this Part of this Act to the three-year period relating to a right of action is a reference to the period of three years from the date on which that right of action accrued:

Provided that, in relation to any right of action in respect of which, by virtue of subsection (2) of section 6 of the Law Reform (Limitation of Actions, etc.) Act 1954 (which relates to persons under a disability), an action could have been brought after the end of the period of three years from the date on which that right of action accrued, any reference in this Part of this Act to the three-year period relating to that right

of action shall be construed as a reference to the period up to the end of which an action could, by virtue of that subsection, have been brought in respect thereof.

(3) For the purposes of this Part of this Act any reference in this Act to the material facts relating to a right of action is a reference to any one or more of the following, that is to say—

- (a) the fact that personal injuries resulted from a wrongful act or omission;
- (b) the nature or extent of the personal injuries so resulting;
- (c) the fact that the personal injuries so resulting were attributable to that wrongful act or omission, or the extent to which any of those personal injuries were so attributable.

(4) Subsections (4) to (6) and (8) of section 7 of this Act shall have effect for the purposes of this Part of this Act as they have effect for the purposes of Part I of this Act, with the substitution, in the said subsection (4), for the references to section 2 (1) of the Limitation Act 1939 and to a cause of action, of references respectively to section 6 (1) of the Law Reform (Limitation of Actions, etc.) Act 1954 and to a right of action.

(5) In this Part of this Act the expression “wrongful” includes “negligent”, and the expressions “commencement”, in relation to an action, and “personal injuries” have the same meanings as in section 6 of the Law Reform (Limitation of Actions, etc.) Act 1954.

PART III

SUPPLEMENTARY

Provisions
as to
Northern
Ireland

14.—(1) Section 5 of the Limitation (Enemies and War Prisoners) Act 1945 (which, in relation to Northern Ireland, restricts the application of that Act to periods of limitation prescribed by enactments in force at the date of the passing of that Act) shall have effect as if for the words “in force in Northern Ireland at the date of the passing of this Act” there were substituted the words “for the time being in force in Northern Ireland”.

(2) If the Parliament of Northern Ireland enacts legislation whereby the right to recover contribution conferred by section 16 of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1937 is made subject to a period of limitation of two years, and that period of limitation is not liable to be extended or postponed except in circumstances, and to an

extent, corresponding to those provided for by section 4 (3) of this Act, no limitation or restriction imposed by the Government of Ireland Act 1920 on the power of that Parliament to make laws shall be construed as preventing that Parliament (either by the same or any subsequent legislation) from repealing, in their application to Northern Ireland, the words repealed in relation to England and Wales by section 4 (4) of this Act.

(3) If, in accordance with the last preceding subsection, the Parliament of Northern Ireland repeals those words in their application to Northern Ireland, that Parliament shall not have power to enact legislation whereby, in relation to torts falling within Article 29 in Schedule 1 to the Carriage by Air Act 1961, the period of limitation applicable to the right to recover contribution conferred by the said section 16, or by any enactment whereby that section is superseded, would be reduced below, or increased above, two years, or would be liable to be extended or postponed otherwise than as mentioned in the last preceding subsection.

15. Except in so far as the context otherwise requires, any reference in this Act to an enactment shall be construed as a reference to that enactment as amended or extended by or under any other enactment. Construction
of references
to
enactments

16.—(1) This Act may be cited as the Limitation Act 1963. Short title
and extent

(2) Part II of this Act shall extend to Scotland only, and, except so far as otherwise provided in the said Part II, Part I of this Act shall not extend to Scotland.

(3) This Act, except section 14 thereof, shall not extend to Northern Ireland.

Table of Statutes referred to in this Act

Short Title	Session and Chapter
Government of Ireland Act 1920.....	10 & 11 Geo. 5. c. 67.
Law Reform (Miscellaneous Provisions) Act 1934..	24 & 25 Geo. 5. c. 41.
Law Reform (Married Women and Tortfeasors) Act 1935.....	25 & 26 Geo. 5. c. 30.
Limitation Act 1939.....	2 & 3 Geo. 6. c. 21.
Law Reform (Miscellaneous Provisions) (Scotland) Act 1940.....	3 & 4 Geo. 6. c. 42.
Limitation (Enemies and War Prisoners) Act 1945.	8 & 9 Geo. 6. c. 16.
Law Reform (Limitation of Actions, &c.) Act 1954.	2 & 3 Eliz. 2. c. 36.
Carriage by Air Act 1961	9 & 10 Eliz. 2. c. 27.

APPENDIX G

THE NEW SOUTH WALES RECOMMENDED BILL

(This bill was recommended by the New South Wales Law Reform Commission in its First Report on the Limitation of Actions, dated October, 1967.)

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Limitation Act, ^{Short title and commencement} 1967".

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. This Act is to be read and construed subject to the ^{Construction} Commonwealth of Australia Constitution Act and so as not to exceed the legislative power of the State, to the intent that where any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application of the provision to other persons or circumstances is not to be affected.

3. This Act is divided into Parts and Divisions as follows:— ^{Division}

PART I.—PRELIMINARY—ss. 1-11.

PART II.—PERIODS OF LIMITATION AND RELATED MATTERS—ss. 12-50.

DIVISION 1.—*Preliminary*—ss. 12, 13.

DIVISION 2.—*General*—ss. 14-26.

DIVISION 3.—*Land*—ss. 27-39.

DIVISION 4.—*Mortgages*—ss. 40-46.

DIVISION 5.—*Trusts*—ss. 47-50.

PART III.—POSTPONEMENT OF THE BAR—ss. 51-62.

DIVISION 1.—*General*—s. 51.DIVISION 2.—*Disability, confirmation, fraud and mistake*—ss. 52-56.DIVISION 3.—*Personal injury cases*—ss. 57-62.

PART IV.—MISCELLANEOUS—ss. 63-77.

DIVISION 1.—*Extinction of right and title*—ss. 63-68.DIVISION 2.—*Arbitration*—ss. 69-73.DIVISION 3.—*General*—ss. 74-77.

SCHEDULES.

Repeal,
amendment
and citation
Schedule
One
Part A

4. (1) Each Imperial Act specified in Part A of Schedule One to this Act is, to the extent therein expressed, repealed so far as it applies to New South Wales.

Schedule
One
Part B

(2) Each Act specified in Part B of Schedule One to this Act is, to the extent therein expressed, repealed.

Schedule
Two

(3) Each Act specified in column 1 of Schedule Two to this Act is amended as specified opposite that Act in column 2 of that Schedule.

(4) The Conveyancing Act, 1919, as amended by inserting next after section 19 the following new section:—

Estates
tail—
further
provisions

19A. (1) Where at or after the commencement of the Limitation Act, 1967, any person is entitled, or would, but for section nineteen of this Act, be entitled, to an estate tail (legal or equitable) and whether in possession, reversion, or remainder, in any land, such person shall be deemed to be entitled to an estate in fee simple (legal or equitable, as the case may be) in such land, to the exclusion of all estates or interests limited to take effect after the determination or in defeasance of any such estate tail and to the exclusion of all estates or interests in reversion on any such estate tail.

(2) In this section the expression "estate tail" includes that estate in fee into which an estate tail is converted where the issue in tail are barred, but persons claiming estates by way of remainder or otherwise are not barred; also an estate in fee voidable or determinable by the entry of the issue in tail; but does not include the estate of a tenant in tail after possibility of issue extinct.

(3) This section applies to land under the provisions of the Real Property Act, 1900, as amended by subsequent Acts, and the Registrar-General is hereby

authorised on the prescribed application to make all such entries in the register book as may be necessary to give effect thereto.

(5) Each Act specified in column 1 of Schedule Three^{Schedule Three} to this Act, as amended by this Act, may be cited in the manner specified opposite that Act in column 2 of that Schedule.

5. (1) Section 8 of the Interpretation Act of 1897 applies^{Saving} to the repeal by this Act in whole or in part of an Imperial Act in the manner in which that section applies to the repeal in whole or in part of an Act.

(2) The repeal or amendment of an enactment or Imperial<sup>cf. 52 & 53
Vict. c. 63,
s. 38 (2)
(a)</sup> enactment by this Act does not revive anything not in force or existing at the commencement of this Act.

6. Subject to section 26 and to Division 3 of Part III of^{Transition} this Act, nothing in this Act—

- (a) affects an action brought or arbitration commenced<sup>cf. 2 & 3
Geo. 6,
c. 21, s. 33
(b)</sup> before the commencement of this Act;
- (b) enables an action or arbitration to be commenced<sup>cf. 2 & 3
Geo. 6,
c. 21, s. 33
(a)</sup> or maintained which is barred at the commencement of this Act by an enactment or an Imperial enactment repealed or amended by this Act;
- (c) affects the extinction of the title of a person to land under section 34 of the Imperial Act shortly entitled the Real Property Limitation Act, 1833, as adopted and applied by the Act passed in the eighth year of the reign of King William the Fourth, number three, where the period limited by that Imperial Act, as so adopted and applied, to that person for making an entry or distress or bringing any action or suit to recover the land has commenced to run before the commencement of this Act; or
- (d) prevents the commencement and maintenance of an action or arbitration within the time allowed by an enactment or an Imperial enactment repealed or amended by this Act on a cause of action which accrued before the commencement of this Act, but this paragraph has effect subject to paragraphs (b) and (c) of this section.

7. Nothing in this Act—

<sup>Other
limitations</sup>

- (a) applies to an action or arbitration for which a limitation period is fixed by or under an enactment<sup>cf. 2 & 3
Geo. 6,
c. 21, s. 32</sup> other than this Act or by or under an Imperial

enactment (not being an enactment or an Imperial enactment repealed or omitted by this Act); or

cf. 2 & 3
Geo. 6,
c. 21, s. 32

- (b) applies to an action or arbitration to which the Crown is a party and for which, if it were between subjects, a period of limitation would be fixed by or under an enactment other than this Act or by or under an Imperial enactment (not being an enactment or an Imperial enactment repealed or omitted by this Act).

Saving of
specified
enactments

8. Nothing in this Act affects the operation of—

- (a) section 45 of the Real Property Act, 1900;
(b) section 235B of the Crown Lands Consolidation Act, 1913; or
(c) subsection (2) of section 50 of the Conveyancing Act, 1919.

Acquie-
scence, etc.
cf. 2 & 3
Geo. 6,
c. 21, s. 29

9. Nothing in this Act affects the rules of equity concerning the refusal of relief on the ground of laches as acquiescence or otherwise.

The Crown
cf. 2 & 3
Geo. 6,
c. 21, s. 30
(1)

10. (1) Subject to subsections (3) and (4) of this section, this Act binds the Crown and the Crown has the benefit of this Act.

cf. 2 & 3
Geo. 6,
c. 21, s. 30
(2)

(2) For the purposes of this Act an action by an officer of the Crown as such or a person acting on behalf of the Crown is an action by the Crown.

cf. 2 & 3
Geo. 6,
c. 21, s. 30
(1) proviso

(3) This Act does not apply to an action by the Crown—

- (a) for the recovery of a tax or duty or of interest on a tax or duty; or
(b) in respect of the forfeiture of a ship.

cf. 2 & 3
Geo. 6,
c. 21, s. 30
(4)

(4) This Act does not affect the prerogative right of the Crown to gold and silver.

Interpre-
tation
cf. 2 & 3
Geo. 6,
c. 21,
31 (1)

11. (1) In this Act, unless the context or subject matter otherwise indicates or requires—

“Action” includes any proceeding in a court.

“Crown” includes not only the Crown in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

“Deed” includes an instrument having the effect of a deed under the law of New South Wales or, in the case of an instrument executed pursuant to the law of—

- (a) the United Kingdom of Great Britain and Northern Ireland;
- (b) another State of the Commonwealth;
- (c) the Commonwealth;
- (d) a Territory of the Commonwealth; or
- (e) New Zealand,

having the effect of a deed under the law pursuant to which it is executed.

“Income” includes interest on a judgment and other interest, and includes rent annuities and dividends, but does not include arrears of interest secured by a mortgage and lawfully treated as principal.

cf. Act No.
6, 1919,
s. 144 (1)

“Judgment” includes not only a judgment of a court of New South Wales but also a judgment of a court of the United Kingdom of Great Britain and Northern Ireland, a court of another State of the Commonwealth, a court of the Commonwealth, a court of a Territory of the Commonwealth, or a court of any other place.

“Land” includes—

- (a) corporeal hereditaments and rentcharges and any estate or interest therein whether freehold or leasehold and whether at law or in equity; and
- (b) the interest pending sale of land (including incorporeal hereditaments) held on trust for sale of a person having an interest in the proceeds of sale;

but does not include easements or profits à prendre nor, subject to paragraphs (a) and (b) of this definition, other incorporeal hereditaments.

“Landlord” means a person entitled to land subject to a lease.

“Mortgage” does not include a possessory lien on goods nor any binding effect on property arising under a

cf. Act No.
6, 1919,
s. 7 (1)

writ of execution against the property but otherwise includes a charge or lien on any property for securing money or money's worth.

cf. Act No.
6, 1919,
s. 7 (1)

"Mortgagee" includes a person claiming a mortgage through an original mortgagee.

cf. Act No.
6, 1919,
s. 7 (1)

"Mortgagor" includes a person claiming property subject to a mortgage through an original mortgagor.

"Personal representative" means an executor to whom probate has been granted, including an executor by right of representation, or an administrator within the meaning of the Wills, Probate and Administration Act, 1898, and includes the Public Trustee acting under section 23 of the Public Trustee Act, 1913.

"Plaintiff" means a person bringing an action.

"Principal money", in relation to a mortgage, means all money secured by the mortgage, including arrears of interest lawfully treated as principal, but does not include other interests.

"Rent" includes a rent payable under a lease and any other rent service and a rentcharge.

"Rentcharge" means an annuity or other periodical sum of money, being an annuity or sum charged on or payable out of land, but does not include a rent payable under a lease nor any other rent service nor interest under a mortgage.

cf. 2 & 3
Geo. 6,
c. 21, s. 25
(8)

"Successor", in relation to a person liable on a cause of action, means a person on whom the liability of the firstmentioned person devolves, whether as personal representative or otherwise on death, or on bankruptcy, disposition of property, or determination of a limited estate or interest, or otherwise.

cf. Act No.
14, 1925,
s. 5
cf. *Taylor*
v. Davies
[1920]
A.C. 636,
at p. 653

"Trust" includes express implied and constructive trusts, whether or not the trustee has a beneficial interest in the trust property, and whether or not the trust arises only by reason of a transaction impeached, and includes the duties incident to the office of personal representative but does not include the duties incident to the estate or interest of a mortgagee in mortgaged property.

"Trustee" has a meaning corresponding to the meaning of "trust".

(2) For the purposes of this Act—

- (a) a person claims through another person in respect of any property or right if he is entitled to the property or right by through under or by the act of that other person, but a person entitled to property or a right by virtue of an appointment under a special power of appointment does not, by reason of the appointment, claim the property or right through the appointor; cf. 2 & 3
Geo. 6,
c. 21, s. 31
(4)
- (b) a reference to a cause of action to recover land includes a reference to a right to enter into possession of the land; cf. 2 & 3
Geo. 6,
c. 21, s. 31
(5)
- (c) a thing done to or by or suffered by an agent is done to or by or suffered by his principal; and cf. 2 & 3
Geo. 6,
c. 21, ss. 24
(2), 26 (a)
- (d) a cause of action to which any of the provisions of Division 4 of Part II of this Act applies is not a cause of action to recover land or a cause of action to enforce an equitable estate or interest in land. cf. 2 & 3
Geo. 6,
c. 21, s. 18
(4)

(3) For the purposes of this Act a person is under a disability—

- (a) while he is an infant; or
- (b) while he is, for a continuous period of twenty-eight days or upwards, incapable of, or substantially impeded in, the management of his affairs in relation to the cause of action in respect of the limitation period for which the question arises, by reason of—
 - (i) any disease or any impairment of his physical or mental condition;
 - (ii) restraint of his person, lawful or unlawful, including detention or custody under the Mental Health Act, 1958;
 - (iii) war or warlike operations; or
 - (iv) circumstances arising out of war or warlike operations.

(4) In this Act, in respect of land which is a rent charge—

- (a) a reference to the possession of land is a reference to the receipt of the rent; and
- (b) a reference to the date of dispossession or discontinuance of possession of land is a reference to the date when rent first becomes overdue.

cf. 2 & 3
Geo. 6,
c. 21, s. 31
(6)

Disability
cf. 2 & 3
Geo. 6,
c. 21, s. 31
(2), (3)

(5) The provisions of this Act as to the date of accrual of a cause of action have effect for the purposes of this Act but not for any other purpose.

(6) In this Act, a reference to an Act includes amendments of that Act by subsequent Acts.

PART II.

PERIODS OF LIMITATION AND RELATED MATTERS.

DIVISION 1.—*Preliminary.*

Relationship
to Part III
cf. 2 & 3
Geo. 6,
c. 21, s. 1

12. The provisions of this Part have effect subject to the provisions of Part III of this Act.

More than
one bar
cf. 2 & 3
Geo. 6,
c. 21, s. 2
(3) proviso

13. Where, under each of two or more provisions of this Part, an action is not maintainable if brought after a specified time, the action is not maintainable if brought after the earlier or earliest of those times.

DIVISION 2.—*General.*

General

14. (1) An action on any of the following causes of action is not maintainable if brought after the expiration of a limitation period of six years running from the date on which the cause of action first accrues to the plaintiff or to a person through whom he claims—

cf. 2 & 3
Geo. 6, c. 21,
s. 2 (1) (a)

(a) a cause of action founded on contract (including quasi contract) not being a cause of action founded on a deed;

cf. 2 & 3
Geo. 6, c. 21,
s. 2 (1) (a)

(b) a cause of action founded on tort, including a cause of action for damages for breach of statutory duty;

cf. 2 & 3
Geo. 6, c. 21,
s. 2 (1) (b)

(c) a cause of action to enforce a recognizance;

cf. 2 & 3
Geo. 6, c. 21,
s. 2 (1) (d)

(d) a cause of action to recover money recoverable by virtue of an enactment, other than a penalty or forfeiture or sum by way of penalty or forfeiture.

(2) This section does not apply to—

(a) a cause of action to which section 19 of this Act applies; or

(b) a cause of action for contribution to which section 26 of this Act applies.

(3) For the purposes of paragraph (d) of subsection (1) of this section, “enactment” includes not only an enactment of the New South Wales but also an enactment of the Imperial

Parliament, an enactment of another State of the Commonwealth, an enactment of the Commonwealth, an enactment of a Territory of the Commonwealth and an enactment of any other country.

15. An action on a cause of action for an account founded on a liability at law to account is not maintainable in respect of any matter if brought after the expiration of a limitation period of six years running from the date on which the matter arises.

Accounts
cf. 2 & 3
Geo. 6, c. 21,
s. 2 (2)

16. An action on a cause of action founded on a deed is not maintainable if brought after the expiration of a limitation period of twelve years running from the date on which the cause of action first accrues to the plaintiff or to a person through whom he claims.

Deed
cf. 2 & 3
Geo. 6, s. 21,
s. 2 (3)

17. (1) An action on a cause of action on a judgment is not maintainable if brought after the expiration of a limitation period of twelve years running from the date on which the judgment first becomes enforceable by the plaintiff or by a person through whom he claims.

Judgment
cf. 2 & 3
Geo. 6, c. 21,
s. 2 (4)

(2) A judgment of a court of a place outside New South Wales becomes enforceable for the purposes of this section on the date on which the judgment becomes enforceable in the place where the judgment is given.

(3) Subsection (2) of this section does not apply to a judgment of a court of the Commonwealth, not being a court of a Territory of the Commonwealth.

18. (1) An action on a cause of action to recover a penalty or forfeiture, or sum by way of penalty or forfeiture, recoverable by virtue of an enactment, is not maintainable if brought after the expiration of a limitation period of two years running from the date on which the cause of action first accrues to the plaintiff or to a person through whom he claims.

Penalty and
forfeiture
cf. 2 & 3
Geo. 6, c. 21,
s. 2 (5)

(2) In this section "penalty" does not include a fine to which a person is liable on conviction for a criminal offence.

cf. 2 & 3
Geo. 6, c. 21,
s. 2 (5)
proviso

19. An action on a cause of action arising under section 3 or section 6B of the Compensation to Relatives Act of 1897, by virtue of a death, is not maintainable if brought after the expiration of a limitation period of six years running from the date of the death.

Compensation
to
relatives
cf. Act No.
31, 1897,
s. 5

20. (1) An action on a cause of action to enforce an award of an arbitrator is not maintainable if brought after the expiration of the limitation period fixed by subsection (2) of this section running from the date on which the cause of

Arbitral
award
cf. 2 & 3
Geo. 6, c. 21,
s. 2 (1) (c),
(d), (3)

action first accrues to the plaintiff or to a person through whom he claims.

(2) The limitation period for the purposes of subsection (1) of this section is—

(a) where the award is made under an arbitration agreement and the arbitration agreement is made by deed—twelve years; and

(b) in any other case—six years.

(3) For the purposes of this section a cause of action to enforce an award of an arbitrator accrues on the date on which default first happens in observance of the award, being the default in respect of which the action is brought.

cf. Act No.
29, 1902,
s. 3

(4) In this section, “arbitration agreement” means an agreement to submit present or future differences to arbitration, whether an arbitrator is named in the agreement or not.

(5) This section applies to an award of an arbitrator under any Act regulations rules by-laws order or scheme, but applies to such an award subject to the provisions of the Act regulations rules by-laws order or scheme.

Successive
wrongs to
goods
cf. 2 & 3
Geo. 6, c. 21,
s. 3 (1)

21. Where—

(a) a cause of action for the conversion or detention of goods accrues to a person; and

(b) afterwards, possession of the goods not having been recovered by him or by a person claiming through him, a further cause of action for the conversion or detention of the goods or a cause of action to recover the proceeds of sale of the goods accrues to him or to a person claiming through him,

an action on the further cause of action for conversion or detention or on the cause of action to recover the proceeds of sale is not maintainable if brought after the expiration of a limitation period of six years running from the date when the first cause of action first accrues to the plaintiff or to a person through whom he claims.

Shipping
cf. 2 & 3
Geo. 6, c. 21,
s. 2 (6)

22. (1) Paragraph (a) of subsection (1) of section 14 of this Act applies to a cause of action to recover a seaman’s wages, but otherwise sections 14 to 21 inclusive of this Act do not apply to a cause of action in rem in Admiralty.

cf. Com-
monwealth
Act No. 4,
1913, s. 396
(1)

(2) An action on a cause of action to enforce a claim or lien against a vessel or her owners in respect of any damage or loss to another vessel, her cargo or freight, or any property on board her, or damage for loss of life or personal injuries

suffered by any person on board her, caused by the fault of the former vessel, whether such vessel be wholly or partly in fault, is not maintainable if brought after the expiration of a limitation period of two years running from the date when the damage, loss or injury is caused.

(3) An action on a cause of action to enforce a claim or lien in respect of any salvage services is not maintainable if brought after the expiration of a limitation period of two years running from the date when the salvage services are rendered.

cf. Commonwealth Act No. 4, 1913, s. 396

(4) For the purposes of an action in a court, the court—

cf. Commonwealth Act No. 4, 1913, s. 396

(a) may extend the limitation period mentioned in subsection (2) or subsection (3) of this section to such an extent and on such terms as it thinks fit; and

(b) shall, if satisfied that there has not during the limitation period been a reasonable opportunity of arresting the defendant vessel within the jurisdiction of the court, or within the territorial waters of the country to which the plaintiff's vessel belongs or in which the plaintiff resides or has his principal place of business, extend the limitation period to an extent sufficient to give a reasonable opportunity of so arresting the defendant vessel.

(5) For the purposes of this section—

cf. Commonwealth Act No. 4, 1913, s. 396

(a) "freight" includes passage money and hire;

(b) "vessel" means a vessel used in navigation, other than air navigation, and includes a barge lighter or like vessel; and

cf. Commonwealth Act No. 4, 1913, s. 6

(c) reference to damage or loss caused by the fault of a vessel extends to any salvage or other expenses, consequent upon that fault, recoverable at law by way of damages.

cf. Commonwealth Act No. 4, 1913, s. 396

(6) Part III of this Act does not apply to a cause of action to which subsection (2) or subsection (3) of this section applies.

23. Sections 14, 16, 17, 18, 20 and 21 of this Act do not apply, except so far as they may be applied by analogy, to a cause of action for specific performance of a contract or for an injunction or for other equitable relief.

Equitable relief
cf. 2 & 3 Geo. 6, c. 21, s. 2 (7)

24. (1) Subject to subsection (2) of this section an action on a cause of action to recover arrears of income is not maintainable if brought after the expiration of a limitation period of six years running from the date on which the cause

Arrears of income
cf. 2 & 3 Geo. 6, c. 21, ss. 2 (4), 17, 20

of action first accrues to the plaintiff or to a person through whom he claims.

(2) An action on a cause of action to recover arrears of interest on principal money is not maintainable if brought after the expiration of the limitation period fixed by or under this Act for an action between the same parties to recover the principal money.

(3) Subsections (1) and (2) of this section do not apply to a cause of action to which section 43 of this Act applies.

(4) For the purposes of this section a cause of action to recover arrears of income includes a cause of action to recover the arrears from any person, whether as principal surety or otherwise.

Relief
against
forfeiture
of lease

25. In an action in which any party to the action seeks relief against forfeiture of a lease, the party seeking the relief is not to be required, as a term of relief against forfeiture, to pay rent for the recovery of which, by reason of the expiration of a limitation period fixed by or under this Act, an action would not be maintainable if brought on the date on which the firstmentioned action is brought.

Contribution
between
tortfeasors
cf. 1963
c. 47, s. 4

26. (1) An action on a cause of action for contribution under subsection (1) of section 5 of the Law Reform (Miscellaneous Provisions) Act, 1946, is not maintainable if brought after the first to expire of—

(a) a limitation period of two years running from the date on which the cause of action for contribution first accrues to the plaintiff or to a person through whom he claims; and

(b) a limitation period of four years running from the date of the expiration of the limitation period for the principal cause of action.

cf. 1963
c. 47,
s. 4 (2)

(2) For the purposes of paragraph (a) of subsection (1) of this section, the date on which a cause of action for contribution first accrues is—

(a) if the plaintiff in the action for contribution or a person through whom he claims is liable in respect of the damage for which contribution is claimed by judgment in a civil action or by arbitral award—the date on which the judgment is given or the award is made, whether or not, in the case of a judgment, the judgment is afterwards varied as to quantum of damages; or

- (b) if, in a case to which paragraph (a) of this subsection does not apply, the plaintiff in the action for contribution or a person through whom he claims makes an agreement with a person having a cause of action for the damage for which the cause of action for contribution arises, which agreement fixes, as between the parties to the agreement, the amount of the liability in respect of that damage of the plaintiff in the action for contribution or a person through whom he claims—the date on which the agreement is made.

(3) In paragraph (b) of subsection (1) of this section, the expression “the limitation period for the principal cause of action” means the limitation period fixed by or under this Act or by or under any other enactment (including an enactment repealed or omitted by this Act) for the cause of action for the liability in respect of which contribution is sought.

(4) Nothing in this section affects the construction of section 5 of the Law Reform (Miscellaneous Provisions) Act, 1946.

DIVISION 3.—*Land.*

27. (1) An action on a cause of action to recover land is not maintainable by the Crown if brought after the expiration of a limitation period of thirty years running from the date on which the cause of action first accrues to the Crown or to a person through whom the Crown claims. General
cf. 2 & 3
Geo. 6, c. 21,
s. 4 (1)

(2) Subject to subsection (3) of this section an action on a cause of action to recover land is not maintainable by a person other than the Crown if brought after the expiration of a limitation period of twelve years running from the date on which the cause of action first accrues to the plaintiff or to a person through whom he claims. cf. 2 & 3
Geo. 6, c. 21,
s. 4 (3)

(3) Subsection (2) of this section does not apply to an action brought by a person claiming through the Crown and brought on a cause of action which accrues to the Crown. cf. 2 & 3
Geo. 6, c.
21, s. 4 (3)
proviso

(4) Where a cause of action to recover land accrues to the Crown, an action on that cause of action is not maintainable by a person claiming through the Crown if brought after the expiration of the first to expire of— cf. 2 & 3
Geo. 6, c.
21, s. 4 (3)
proviso

- (a) the limitation period fixed by or under this Act for an action on that cause of action by the Crown; and
- (b) a limitation period of twelve years running from the date on which the cause of action first accrues (on or after the date of accrual to the Crown) to a person claiming through the Crown.

Accrual—
dispossession or discontinuance
cf. 2 & 3
Geo. 6, c.
21, s. 5 (1)

28. Where the plaintiff in an action on a cause of action to recover land or a person through whom he claims—

- (a) has been in possession of the land; and
- (b) while entitled to the land, is dispossessed or discontinues his possession,

the cause of action accrues on the date of dispossession or discontinuance.

Accrual—
deceased in
possession
cf. 2 & 3
Geo. 6, c.
21, s. 5 (2)

29. Where—

- (a) the estate or interest claimed in an action on a cause of action to recover land is an estate or interest—

- (i) assured as an estate or interest in possession by the will of a deceased person; or

- (ii) passing on intestacy,

to the plaintiff or to a person through whom he claims;

- (b) the deceased is, at the date of his death, in possession by virtue of the estate or interest claimed or by virtue of an estate or interest out of which the assurance is made; and

- (c) no person is, after the date of the death of the deceased and before the date on which the action is brought, in possession—

- (i) by virtue of the estate or interest claimed and under the assurance or intestacy; or

- (ii) as personal representative of the deceased,

the cause of action accrues on the date of the death of the deceased.

Accrual—
grantor in
possession
cf. 2 & 3
Geo. 6, c. 21,
s. 5 (3)

30. Where—

- (a) the estate or interest claimed in an action on a cause of action to recover land is an estate or interest assured as an estate or interest in possession (otherwise than by will) to the plaintiff or to a person through whom he claims;

- (b) the person making the assurance is, on the date when the assurance takes effect, in possession by virtue of the estate or interest claimed or by virtue

of an estate or interest out of which the assurance is made; and

- (c) no person is, after the date on which the assurance takes effect and before the date on which the action is brought, in possession by virtue of the estate or interest claimed and by virtue of the assurance,

the cause of action accrues on the date on which the assurance takes effect.

31. Subject to section 67 of this Act, where—

Accrual—
future
interests
cf. 2 & 3
Geo. 6, c. 21,
s. 6 (1)

- (a) the estate or interest claimed in an action on a cause of action to recover land is at any time an estate or interest in reversion or remainder or any other future estate or interest; and

- (b) no person is, at any time after the date on which the estate or interest claimed becomes a present estate or interest and before the date on which the action is brought, in possession by virtue of the estate or interest claimed,

the cause of action accrues on the date on which the estate or interest claimed becomes a present estate or interest.

32. (1) Subject to subsection (2) of this section, a cause of action to recover land by virtue of a forfeiture or breach of condition accrues on the date on which the plaintiff or a person through whom he claims first discovers or may with reasonable diligence discover the facts giving the right of forfeiture or showing that the condition is broken.

Forfeiture
and breach
of condition
cf. 2 & 3
Geo. 6, c. 21,
s. 8

(2) Subject to section 33 of this Act, if a cause of action to recover land by virtue of a forfeiture or breach of condition accrues to a person entitled to an estate or interest in reversion or remainder or any other future estate or interest and neither he nor a person claiming under him recovers the land by virtue of the forfeiture or breach of condition, a fresh cause of action to recover the land accrues, on the date on which that estate or interest becomes a present estate or interest, to the person entitled on that date to that estate or interest.

cf. 2 & 3
Geo. 6, c.
21, s. 8
proviso

33. Where—

Rent
wrongly
paid

- (a) a tenant is in possession of land under a lease for a term reserving a rent amounting to a yearly sum of not less than two dollars;

cf. 2 & 3
Geo. 6, c.
21, s. 9 (3)

- (b) the rent is received by a person wrongfully claiming to be entitled to the land subject to the lease; and

- (c) no rent is afterwards received by the landlord and in consequence the term becomes liable to determination by virtue of a forfeiture or breach of condition,

the cause of action of the landlord to recover the land from the tenant or from the person receiving the rent and wrongfully claiming to be entitled to the land subject to the lease or from a person claiming under either of them accrues on the date on which the term first becomes liable to determination as mentioned in paragraph (c) of this section.

Tenancies
cf. 2 & 3
Geo. 6, c.
21, s. 9 (1),
(2)

34. (1) This section applies to—

- (a) a tenancy from year to year or other periodical tenancy;
- (b) a tenancy at will; and
- (c) a tenancy to which section 127 of the Conveyancing Act, 1919, applies.

(2) The cause of action of a person entitled to land subject to a tenancy to which this section applies to recover the land from the tenant or from a person claiming under the tenant accrues on the only or later or latest of such of the following dates as are applicable—

- (a) in the case of a tenancy from year to year or other periodical tenancy—the date of the expiration of the first year or other period of the tenancy;
- (b) in the case of a tenancy at will or a tenancy to which section 127 of the Conveyancing Act, 1919, applies—the date of the expiration of one year after the commencement of the tenancy; and
- (c) in any case where the tenancy is at a rent—the date on which rent payable to the person having the cause of action or a person through whom he claims first becomes overdue,

unless the cause of action accrues on an earlier date by virtue of a demand of possession, forfeiture or breach of condition, or otherwise.

Landlord
and Tenant
(Amend-
ment)
Act, 1948

35. Where a landlord is forbidden by the Landlord and Tenant (Amendment) Act, 1948, to take proceedings to recover possession of land from any person, the cause of action of the landlord to recover the land from that person accrues on the date on which the landlord ceases to be so forbidden or on the date on which, but for this section, the cause of action would accrue, whichever date is the later.

36. (1) Subject to section 23 of this Act, this Act applies ^{Equitable interest} to an action on a cause of action to enforce an equitable estate or interest in land in like manner as it applies to an action ^{cf. 2 & 3 Geo. 6, c. 21, s. 7} on a cause of action to recover land by virtue of a legal estate ⁽¹⁾ or interest in land.

(2) For the purposes of this Act, but without limiting ^{cf. 2 & 3 Geo. 6, c. 21, s. 7 (1)} the generality of subsection (1) of this section, a cause of action to enforce an equitable estate or interest in land accrues in the like manner and circumstances and on the same date as a cause of action to recover the land would accrue if the estate or interest were a legal estate or interest.

37. (1) Where land is held on trust under a settlement— ^{Settled land}

- (a) while there is in existence or there may come into ^{cf. 2 & 3 Geo. 6, c. 21, s. 7 (4)} existence a beneficiary whose cause or action to enforce his estate or interest in the land under the settlement has not accrued or has not been barred by this Act, nothing in this Act bars a cause of action of the trustee to recover the land or to enforce an equitable estate or interest in the land, so far as the cause of action is necessary to support or give effect to the estate or interest of the beneficiary in the land under the settlement; but
- (b) when the cause of action of every possible beneficiary to enforce his estate or interest in the land under the settlement is barred by this Act, and the cause of action of the trustee to recover the land or to enforce an equitable estate or interest in the land would, but for paragraph (a) of this subsection, be barred by this Act, an action on a cause of action to recover the land or to enforce an equitable estate or interest in the land is not maintainable by the trustee.

(2) Subject to subsection (3) of this section, where land ^{cf. 2 & 3 Geo. 6, c. 21, s. 7 (5)} is held on trust under a settlement and a person entitled to a present estate or interest in the land under the settlement is in possession of the land, a cause of action to recover the land or to enforce an equitable estate or interest in the land does not, for the purposes of this Act, accrue to the trustee or to any person entitled to an estate or interest in the land under the settlement against the person in possession of the land while the latter person is entitled to the firstmentioned estate or interest and is in possession of the land.

(3) Subsection (2) of this section does not apply to a cause ^{cf. 2 & 3 Geo. 6, c. 21, s. 7 (5)} of action against—

- (a) a person in possession who is solely and absolutely entitled under the settlement to the land; or

- (b) two or more persons in possession who are absolutely entitled under the settlement to the land as joint tenants or as tenants in common.

(4) In this section, "settlement" means a disposition, inter vivos or by will, of property upon trust, where no person is, immediately after the disposition takes effect, beneficially entitled to the trust property absolutely.

Adverse
possession
cf. 2 & 3
Geo. 6, c. 21,
s. 10 (1)

38. (1) Where, on the date on which, under this Act, a cause of action would, but for this section, accrue, the land is not in adverse possession, the accrual is postponed so that the cause of action does not accrue until the date on which the land is first in adverse possession.

(2) Subject to subsection (3) of this section, where a cause of action accrues to recover land from a person in adverse possession of the land, and the land is afterwards in the adverse possession of a second person, whether the second person claims through the first person or not, the cause of action to recover the land from the second person accrues on the date on which the cause of action to recover the land from the first person first accrues to the plaintiff or to a person through whom he claims.

cf. 2 & 3
Geo. 6, c. 21,
s. 10 (2)

(3) Where a cause of action to recover land accrues and afterwards, but before the cause of action is barred by this Act, the land ceases to be in adverse possession, for the purposes of this Act—

- (a) the former adverse possession has no effect; and
- (b) a fresh cause of action accrues on, but not before, the date when the land is first again in adverse possession.

(4) For the purposes of this section—

cf. 2 & 3
Geo. 6, c. 21,
s. 10 (1)

(a) "adverse possession" is possession by a person in whose favour the limitation period can run;

cf. 2 & 3
Geo. 6, c. 21,
s. 10 (3)
(a)

(b) possession of land subject to a rentcharge by a person who does not pay the rent is possession by him of the rentcharge; and

cf. 2 & 3
Geo. 6, c. 21,
s. 10 (3)
(b)

(c) in a case to which section 33 of this Act applies, receipt of the rent by a person wrongfully claiming to be entitled to the land subject to the lease is, as against the landlord, adverse possession of the land.

cf. 3 & 4
Wm. IV,
c. 27, s. 12
Vict. Act
No. 6295,
s. 14 (4)

(5) Where land is held by joint tenants or tenants in common, possession by a tenant of more than his share, not for the benefit of the other tenant, is, as against the other tenant, adverse possession.

39. For the purposes of this Act—

- (a) a formal entry on land is not of itself possession or evidence of possession of the land; and
- (b) a claim upon or near land does not preserve a cause of action to recover the land.

Formal
entry and
claim
cf. 2 & 3
Geo. 6, c. 21,
s. 13

DIVISION 4.—*Mortgages.*

40. This Act applies to an action on a cause of action founded on a mortgage registered under the Real Property Act, 1900, to recover from any person any debt damages or other money payable under the mortgage, but otherwise this Act does not affect the right title or remedies under a mortgage so registered of a registered proprietor under that Act of the mortgage or of the mortgaged land.

Mortgage
under Real
Property
Act

41. An action on a cause of action to redeem mortgaged property in the possession of a mortgagee is not maintainable against that mortgagee if brought after the expiration of a limitation period of twelve years running from the only or later of such of the following dates as are applicable—

Redemption
cf. 2 & 3
Geo. 6, c. 21,
s. 12

- (a) the date on which that mortgagee or a person through whom he claims last goes into possession of the property in respect of which the action is brought; and
- (b) the date on which that mortgagee or a person through whom he claims last receives a payment of principal money or interest secured by the mortgage from the plaintiff or from a person through whom he claims.

cf. 2 & 3
Geo. 6, c. 21,
s. 23 (3)

42. (1) An action on a cause of action—

- (a) to recover principal money secured by mortgage;
- (b) to recover possession of mortgaged property from a mortgagor; or
- (c) to foreclose the equity of redemption of mortgaged property,

Action for
principal,
possession
or fore-
closure
cf. 2 & 3
Geo. 6, c. 21,
s. 18 (1)

is not maintainable by a mortgagee under the mortgage if brought after the expiration of a limitation period of twelve years running from the date on which the cause of action first accrues to the plaintiff or to a person through whom he claims.

(2) Paragraph (a) of subsection (1) of this section applies to a cause of action—

- (a) to recover principal money from any person, whether as principal, surety or otherwise; or
- (b) to recover principal money by way of—
 - (i) the appointment of a receiver of mortgaged property or of the income or profits of mortgaged property;
 - (ii) the sale lease or other disposition or realization of mortgaged property; or
 - (iii) other remedy affecting mortgaged property.

Action for
interest
cf. 2 & 3
Geo. 6, c. 21,
s. 18 (5)

43. (1) An action on a cause of action to recover interest secured by a mortgage is not maintainable by a mortgagee under the mortgage if brought after the expiration of—

- (a) a limitation period of six years running from the only or later of such of the following dates as are applicable—
 - (i) the date on which the cause of action first accrues to the plaintiff or to a person through whom he claims; and
 - (ii) where a mortgagee under a prior mortgage is, on the date mentioned in subparagraph (i) of this paragraph, in possession of all or any of the property comprised in the mortgage securing the interest, and after that date discontinues his possession—the date of discontinuance; or
- (b) the limitation period fixed by or under this Act for an action between the same parties on a cause of action to recover the principal money bearing the interest,

whichever limitation period first expires.

(2) For the purposes of subsection (1) of this section, a cause of action to recover interest secured by a mortgage includes—

- (a) a cause of action to recover the interest from any person, whether as principal surety or otherwise; and
- (b) a cause of action to recover the interest by way of—
 - (i) the appointment of a receiver of mortgaged property or of income or profits of mortgaged property;

(ii) sale, lease or other disposition or realization of the mortgaged property; or

(iii) other remedy affecting mortgaged property.

44. (1) In an action for redemption or otherwise in ^{Adjust-}respect of a mortgage of property including an action in ^{ment of}interest respect of the proceeds of sale or other realization of property subject to a mortgage—

(a) a mortgagor is not, as against a mortgagee, to be required to pay or bear interest which could not, by reason of a period of limitation fixed by or under this Act, be recovered in an action by that mortgagee against that mortgagor brought on the date on which the firstmentioned action is brought; and

(b) in adjusting the rights of a mortgagor and a mortgagee the mortgagee is not to be entitled to the interest mentioned in paragraph (a) of this subsection.

(2) Where—

(a) interest becomes due under a mortgage; and

(b) a mortgagee—

(i) holds money on the date on which the interest becomes due; or

(ii) after that date but before the expiration of the limitation period fixed by or under this Act for an action on a cause of action to recover that interest by that mortgagee against a mortgagor, receives money; and

(c) before or after the bringing of an action to which subsection (1) of this section applies, that mortgagee or a person claiming through him properly applies that money in or towards satisfaction of that interest,

subsection (1) of this section does not, as against the person so applying that money or a person claiming through him, apply to that interest to the extent to which it is so satisfied.

45. A mortgagee shall not, after the date on which an ^{Power of}action on a cause of action to recover principal money secured ^{sale, etc.}by the mortgage within the meaning of section 42 of this Act by him against any person is barred by this Act, exercise, as against that person or a person claiming through him, a power—

- (a) of sale lease or other disposition or realization of the mortgaged property;
- (b) to appoint a receiver; or
- (c) otherwise affecting the mortgaged property.

Mortgage
of ship
cf. 2 & 3
Geo. 6, c. 21,
s. 18 (6)

46. This Division does not apply to a mortgage registered under the Imperial Act known as the Merchant Shipping Act, 1894, as amended from time to time, being a mortgage of a registered ship or a share therein within the meaning of that Imperial Act as so amended.

DIVISION 5.—*Trusts.*

Fraud and
conversion
trust
property
cf. 2 & 3
Geo. 6, c. 21,
s. 19 (1)
(a)

47. (1) An actio in rem or a cause of action—

- (a) in respect of fraud or a fraudulent breach of trust, against a person who is, while a trustee, a party or privy to the fraud or the breach of trust or against his successor;
- (b) for a remedy for the conversion to a person's own use of trust property received by him while a trustee, against that person or against his successor;
- (c) to recover trust property, or property into which trust property can be traced, against a trustee or against any other person; or
- (d) to recover money on account of a wrongful distribution of trust property, against the person to whom the property is distributed or against his successor,

cf. 2 & 3
Geo. 6, c. 21,
s. 19 (1)
(b)

cf. 2 & 3
Geo. 6, c. 21,
ss. 19 (1)
(b), (2), 20

cf. 2 & 3
Geo. 6, c. 21,
s. 20

is not maintainable by a trustee of the trust or by a beneficiary under the trust or by a person claiming through a beneficiary under the trust if brought after the expiration of the only or later to expire of such of the following limitation periods as are applicable—

- (e) a limitation period of twelve years running from the date on which the plaintiff or a person through whom he claims first discovers or may with reasonable diligence discover the facts giving rise to the cause of action and that the cause of action has accrued; and
- (f) the limitation period for the cause of action fixed by or under any provision of this Act other than this section.

(2) Except in the case of fraud or a fraudulent breach of trust, and except so far as concerns income converted by a trustee to his own use or income retained and still held by the

trustee or his successor at the time when the action is brought, this section does not apply to an action on a cause of action to recover arrears of income.

48. An action on a cause of action in respect of a breach of trust is not maintainable if brought after the expiration of the only or later to expire of such of the following periods of limitation as are applicable—

Breach of trust
cf. 2 & 3
Geo. 6, c. 21,
s. 19 (2)

- (a) a limitation period of six years running from the date on which the cause of action first accrues to the plaintiff or to a person through whom he claims; and
- (b) the limitation period for the cause of action fixed by or under any provision of this Act other than this section.

49. For the purposes of this Division, a cause of action of a beneficiary in respect of a future estate or interest accrues on the date on which the estate or interest becomes a present estate or interest or on the date on which the cause of action would, but for this section, accrue, whichever date is the later.

Accrual—
future
interest
cf. 2 & 3
Geo. 6, c. 21,
s. 19 (2)
proviso

50. Where a beneficiary under a trust brings an action in respect of the trust, another beneficiary under the trust is not entitled to derive from the action any benefit for which, by reason of this Act, an action by him is not maintainable if brought on the date on which the firstmentioned action is brought.

Beneficiaries
other
than the
plaintiff
cf. 2 & 3
Geo. 6, c. 21,
s. 19 (3)

PART III.

POSTPONEMENT OF THE BAR.

DIVISION 1.—*General.*

51. Notwithstanding the provisions of this Part, an action on a cause of action for which a limitation period is fixed by or under Part II of this Act is not maintainable if brought after the expiration of a limitation period of thirty years running from the date from which the limitation period for that cause of action fixed by or under Part II of this Act runs.

Ultimate
bar
cf. 2 & 3
Geo. 6, c. 21,
s. 22 (1)
proviso
(c)

DIVISION 2.—*Disability, confirmation, fraud and mistake.*

52. (1) Subject to subsections (2) and (3) of this section and subject to section 53 of this Act, where—

Disability
cf. 2 & 3
Geo. 6, c. 21,
s. 22 (1)

- (a) a person has a cause of action;
- (b) the limitation period fixed by this Act for the cause of action has commenced to run; and

- (c) the person is under a disability,
- in that case—
- (d) the running of the limitation period is suspended for the duration of the disability; and
- (e) if, but for this paragraph, the limitation period would expire before the lapse of three years after—
- (i) the date on which he last (before the expiration of the limitation period) ceases to be under a disability; or
- (ii) the date of his death,
- (whichever date is the earlier), the limitation period is extended so as to expire three years after the earlier of those dates.

(2) This section applies whenever a person is under a disability, whether or not he is under the same or another disability at any time during the limitation period.

cf. 2 & 3
Geo. 6, c. 21,
s. 22 (1)
proviso (c)

(3) This section does not apply to a cause of action to recover a penalty or forfeiture or sum by way of penalty or forfeiture, except where the person having the cause of action is an aggrieved party.

Notice to
proceed

53. (1) In this section, “curator” means—

- (a) in respect of a person—
- (i) who is a patient within the meaning of the Mental Health Act, 1958, including a person detained in a mental hospital under Part VII of that Act;
- (ii) who is a voluntary patient within the meaning of that Act whose property has been taken in charge under section 22 of that Act by the Master in the Protective Jurisdiction of the Supreme Court; or
- (iii) to whose property section 101 of that Act applies—

the Master in the Protective Jurisdiction of the Supreme Court;

- (b) in respect of a protected person within the meaning of that Act, where a committee of his estate is appointed under section 38 of that Act—the committee;

- (c) in respect of an incapable person within the meaning of that Act, where a manager of his property is appointed under section 39 of that Act—the manager; and
- (d) in respect of a person of whose estate a committee is appointed under section 48 of that Act—the committee.

(2) Where a person having a cause of action is under a disability but has a curator, a person against whom the cause of action lies may give the curator a notice to proceed in accordance with this section.

(3) Where, after a notice to proceed is given under this section, an action is brought—

- (a) by the person under a disability or by his curator or by a person claiming under the person under a disability;
- (b) on a cause of action to which the notice to proceed relates; and
- (c) against the person giving the notice to proceed or against his successor under a devolution happening after the notice to proceed is given,

subsection (1) of section 52 of this Act has effect as if—

- (d) the person under a disability ceases, on the date of the giving of the notice, to be under any disability under which he is immediately before the giving of the notice; and
- (e) he does not, after the giving of the notice, come under that disability.

(4) A notice to proceed under subsection (2) of this section must—

- (a) be in writing;
- (b) be addressed to the curator;
- (c) show the name of the person under a disability;
- (d) state the circumstances out of which the cause of action may arise or may be claimed to arise with such particularity as is necessary to enable the curator to investigate the question whether the person under a disability has the cause of action;

(c) give warning that a cause of action arising out of the circumstances stated in the notice is liable to be barred by this Act; and

(f) be signed by the person giving the notice.

(5) Minor deviations from the requirements of subsection (4) of this section, not affecting the substance nor likely to mislead, do not invalidate a notice to proceed.

(6) A notice to proceed to be given to the Master in the Protective Jurisdiction of the Supreme Court shall be given by leaving it at the office of the Master.

(7) A notice to proceed to be given to a curator, other than the Master in the Protective Jurisdiction of the Supreme Court, may be given by—

- (a) delivering the notice to proceed to the curator;
- (b) leaving the notice to proceed at the usual or last-known place of business or of abode of the curator;
or
- (c) posting the notice to proceed by the certified mail service to the curator at his usual or last-known place of business or of abode.

(8) A notice to proceed given in accordance with subsection (6) or subsection (7) of this section is, for the purposes of this section, given on the date of leaving delivering or posting as the case may be.

(9) Subsections (7) and (8) of this section do not prevent the giving of a notice to proceed to a curator, other than the Master in the Protective Jurisdiction of the Supreme Court, by any other means.

(10) A notice to proceed under this section is not a confirmation for the purposes of section 54 of this Act and is not an admission for any purpose by the person giving the notice.

Confirma-
tion
cf. 2 & 3
Geo. 6, c. 21,
s. 23 (1),
(4)

54. (1) Where, after a limitation period fixed by or under this Act for a cause of action commences to run but before the expiration of the limitation period, a person against whom (either solely or with other persons) the cause of action lies confirms the cause of action, the time during which the limitation period runs before the date of the confirmation does not count in the reckoning of the limitation period for an action on the cause of action by a person having the benefit of the confirmation against a person bound by the confirmation.

(2) For the purposes of this section—

(a) a person confirms a cause of action if, but only if, he—

(i) acknowledges, to a person having (either solely or with other persons) the cause of action, the right or title of the person to whom the acknowledgment is made; or

(ii) makes, to a person having (either solely or with other persons) the cause of action, a payment in respect of the right or title of the person to whom the payment is made;

(b) a confirmation of a cause of action to recover interest on principal money operates also as a confirmation of a cause of action to recover the principal money; and

(c) a confirmation of a cause of action to recover income falling due at any time operates also as a confirmation of a cause of action to recover income falling due at a later time on the same account.

(3) Where a person has (either solely or with other persons) a cause of action to foreclose the equity of redemption of mortgaged property or to recover possession of mortgaged property, a payment to him of principal or interest secured by the mortgage or a payment to him otherwise in respect of his right or title to the mortgage is a confirmation by the payer of the cause of action.

(4) An acknowledgment for the purposes of this section must be in writing and signed by the maker.

(5) For the purposes of this section a person has the benefit of a confirmation if, but only if, the confirmation is made to him or to a person through whom he claims.

(6) For the purposes of this section a person is bound by a confirmation if, but only if—

(a) he is a maker of the confirmation;

(b) he is, in relation to the cause of action, a successor of a maker under a devolution from the maker occurring after the making of the confirmation;

(c) where the maker is, at the time when he makes the confirmation, (either solely or with other persons) a trustee of the will or of the estate of a deceased person—the firstmentioned person is at the date of

cf. 2 & 3
Geo. 6, c. 21,
s. 23 (4)
proviso

cf. 2 & 3
Geo. 6, c. 21,
s. 23 (4)
proviso

cf. 2 & 3
Geo. 6, c. 21,
s. 23 (1)
(b)

cf. 2 & 3
Geo. 6, c. 21,
s. 24 (1)

cf. 2 & 3
Geo. 6, c. 21,
s. 25 (3),
(5), (6),
(7)

the confirmation or afterwards becomes a trustee of the will or of the estate;

(d) where the maker is, at the time when he makes the confirmation, (either solely or with other persons) a trustee (other than a trustee of the will or of the estate of a deceased person)—the firstmentioned person is at the date of the confirmation or afterwards becomes a trustee of the trust of which the maker is a trustee; or

(e) he is bound under subsection (7) of this section.

cf. 2 & 3
Geo. 6, c. 21,
s. 25 (1),
(2) (7) (a) Paragraph (b) of this subsection applies to a confirmation of a cause of action—

- (i) to recover property, being goods;
- (ii) to recover property, being land;
- (iii) to enforce in respect of property an equitable estate or interest in land;
- (iv) to foreclose the equity of redemption of mortgaged property;
- (v) to redeem mortgaged property;
- (vi) to recover principal money or interest secured by mortgage of property, by way of the appointment of a receiver of mortgaged property or of the income or profits of mortgaged property or by way of sale, lease or other disposition of mortgaged property or by way of other remedy affecting mortgaged property; or
- (vii) to recover trust property or property into which trust property can be traced.

(b) Where a maker of a confirmation to which this paragraph applies is, on the date of the confirmation, in possession of the property, the confirmation binds a person in possession during the ensuing period of limitation, not being, or claiming through, a person other than the maker who is, on the date of the confirmation, in possession of the property.

Fraud and
deceit
cf. 2 & 3
Geo. 6, c. 21,
s. 26 (a),
(b)

55. (1) Subject to subsection (3) of this section where—

- (a) there is a cause of action based on fraud or deceit;
or
- (b) a cause of action or the identity of a person against whom a cause of action lies is fraudulently concealed,

the time which elapses after a limitation period fixed by or under this Act for the cause of action commences to run and before the date on which a person having (either solely or with other persons) the cause of action first discovers, or may with reasonable diligence discover, the fraud deceit or concealment, as the case may be, does not count in the reckoning of the limitation period for an action on the cause of action by him or by a person claiming through him against a person answerable for the fraud deceit or concealment.

(2) Subsection (1) of this section has effect whether the limitation period for the cause of action would, but for this section, expire before or after the date mentioned in that subsection.<sup>cf. 2 & 3 Geo. 6, c. 21, s. 26 (a).
(b)</sup>

(3) For the purposes of subsection (1) of this section, a person is answerable for fraud deceit or concealment if, but only if—

(a) he is a party to the fraud deceit or concealment;
or

(b) he is, in relation to the cause of action, a successor of a party to the fraud deceit or concealment under a devolution from the party occurring after the date on which the fraud deceit or concealment first occurs.

(4) Where property is, after the first occurrence of fraud deceit or concealment, purchased for valuable consideration by a person who is not a party to the fraud deceit or concealment and does not, at the time of the purchase, know or have reason to believe that the fraud deceit or concealment has occurred, subsection (1) of this section does not, in relation to that fraud deceit or concealment, apply to a limitation period for a cause of action against the purchaser or a person claiming through him.^{cf. 2 & 3 Geo. 6, c. 21, s. 26 proviso (i)}

56. (1) Subject to subsection (3) of this section, where there is a cause of action for relief from the consequences of a mistake, the time which elapses after a limitation period fixed by or under this Act for the cause of action commences to run and before the date on which a person having (either solely or with other persons) the cause of action first discovers, or may with reasonable diligence discover, the mistake does not count in the reckoning of the limitation period for an action on the cause of action by him or by a person claiming through him.<sup>Mistake
cf. 2 & 3 Geo. 6, c. 21, s. 26 (c)</sup>

(2) Subsection (1) of this section has effect whether the limitation period for the cause of action would, but for this section, expire before or after the date mentioned in that subsection.

cf. 2 & 3
Geo. 6, c. 21,
s. 26
proviso (ii)

(3) Where property is, after a transaction in which a mistake is made, purchased for valuable consideration by a person who does not, at the time of the purchase, know or have reason to believe that the mistake has been made, subsection (1) of this section does not apply to a limitation period for a cause of action for relief from the consequences of the mistake against the purchaser or a person claiming through him.

DIVISION 3.—*Personal injury cases.*

Interpre-
tation

57. (1) For the purposes of this Division—

cf. 2 & 3
Geo. 6, c. 21,
s. 31 (1)

(a) “personal injury” includes any disease and any impairment of the physical or mental condition of a person;

cf. 1963
c. 47, s. 7
(3)

(b) the material facts relating to a cause of action include the following—

(i) the fact of the occurrence of negligence nuisance or breach of duty on which the cause of action is founded;

(ii) the identity of the person against whom the cause of action lies;

(iii) the fact that the negligence nuisance or breach of duty causes personal injury;

(iv) the nature and extent of the personal injury so caused; and

(v) the extent to which the personal injury is caused by the negligence nuisance or breach of duty;

(c) material facts relating to a cause of action are of a decisive character if, but only if, a reasonable man, knowing those facts and having taken the appropriate advice on those facts, would regard those facts as showing—

(i) that an action on the cause of action would (apart from the effect of the expiration of a limitation period) have a reasonable prospect of success and of resulting in an award of damages sufficient to justify the bringing of an action on the cause of action; and

(ii) that the person whose means of knowledge is in question ought, in his own interests, and taking his circumstances into account, to bring an action on the cause of action;

- (d) "appropriate advice", in relation to facts, means ^{cf. 1963} the advice of competent persons, qualified in their ^{c. 47,} respective fields to advise on the medical, legal and ^{s. 7 (8)} other aspects of the facts, as the case may require;
- (e) a fact is not within the means of knowledge of a ^{cf. 1963} person at a particular time if, but only if— ^{c. 47,} ^{s. 7 (5)}
- (i) he does not, at that time, know the fact;
and
 - (ii) in so far as the fact is capable of being ascertained by him, he has, before that time, taken all reasonable steps to ascertain the fact; and
- (f) "limitation period" means a limitation period fixed by an enactment repealed or omitted by this Act or fixed by or under this Act.

(2) In this Division the expression "breach of duty" ^{cf. 1963} extends to the breach of any duty, whether arising by statute, ^{c. 47,} contract or otherwise, and includes trespass to the person. ^{s. 1 (2)}

58. (1) This section applies to a cause of action founded ^{Ordinary} on negligence nuisance or breach of duty, for damages for ^{action} personal injury, not being a cause of action which has sur- ^{cf. 1963} ^{c. 47,} ^{ss. 1, 2} vived on the death of a person for the benefit of his estate under section 2 of the Law Reform (Miscellaneous Provisions) Act, 1944, and not being a cause of action which arises under section 3 of the Compensation to Relatives Act of 1897.

(2) Where, on application to a court by a person claiming to have a cause of action to which this section applies, it appears to the court that—

- (a) any of the material facts of a decisive character relating to the cause of action was not within the means of knowledge of the applicant until a date after the commencement of the year preceding the expiration of the limitation period for the cause of action; and
- (b) there is evidence to establish the cause of action, apart from any defence founded on the expiration of a limitation period,

the court may order that the limitation period for the cause of action be extended so that it expires at the end of one year after that date and thereupon, for the purposes of an action on that cause of action brought by the applicant in that court, and for the purposes of paragraph (b) of subsection (1) of section 26 of this Act, the limitation period is extended accordingly.

cf. 1963
c. 47, s. 6

(3) This section applies to a cause of action whether or not a limitation period for the cause of action has expired—

- (a) before the commencement of this Act; or
- (b) before an application is made under this section in respect of the cause of action.

Surviving
action
cf. 1963
c. 47,
ss. 1, 2, 3

59. (1) This section applies to a cause of action founded on negligence nuisance or breach of duty, for damages for personal injury, which has survived on the death of a person for the benefit of his estate under section 2 of the Law Reform (Miscellaneous Provisions) Act, 1944.

(2) Where, on application to a court by a person claiming to have a cause of action to which this section applies, it appears to the court that—

- (a) any of the material facts of a decisive character relating to the cause of action was not within the means of knowledge of either the deceased or the applicant until a date after the commencement of the year next preceding the expiration of the limitation period for the cause of action; and
- (b) there is evidence to establish the cause of action, apart from any defence founded on the expiration of a limitation period,

the court may order that the limitation period for the cause of action be extended so that it expires at the end of one year after that date and thereupon, for the purposes of an action on that cause of action brought by the applicant in that court, and for the purposes of paragraph (b) of subsection (1) of section 26 of this Act, the limitation period is extended accordingly.

(3) For the purposes of this section, the material facts of a decisive character do not include facts relating only to—

- (a) damages not recoverable by the applicant; or
- (b) funeral expenses of the deceased.

cf. 1963
c. 47, s. 6

(4) This section applies to a cause of action whether or not a limitation period for the cause of action has expired—

- (a) before the commencement of this Act; or
- (b) before an application is made under this section in respect of the cause of action.

60. (1) This section applies to a cause of action for damages which arises (or which would arise, but for the expiration as against the deceased of a limitation period before or after the commencement of this Act) under section 3 of the Compensation to Relatives Act of 1897 by virtue of the death of a person caused by a wrongful act neglect or default.

Compensation to relatives
cf. 1963
c. 47,
ss. 1, 2, 3

(2) Where, on application to a court by a person claiming to have a cause of action to which this section applies, it appears to the court that—

- (a) any of the material facts of a decisive character relating to the cause of action of the deceased in respect of the wrongful act neglect or default was not within the means of knowledge of the deceased at any time before the year next preceding the death of the deceased; and
- (b) there is evidence to establish the cause of action which the applicant claims to have, apart from the expiration as against the deceased of a limitation period,

the court may order that the expiration as against the deceased of a limitation period for a cause of action by him in respect of the wrongful act neglect or default have no effect in relation to the cause of action which the applicant claims to have and thereupon, for the purposes of an action brought by the applicant in that court on the cause of action which he claims to have, that expiration has no effect.

(3) Where, by virtue of this section, the expiration as against the deceased of a limitation period for a cause of action by him in respect of a wrongful act neglect or default has no effect in relation to a cause of action to which this section applies, and the person against whom the lastmentioned cause of action lies brings an action for contribution under subsection (1) of section 5 of the Law Reform (Miscellaneous Provisions) Act, 1946, the expiration as against the deceased of a limitation period for a cause of action by the deceased in respect of a wrongful act neglect or default has no effect in relation to the action for contribution.

61. Where, after the expiration of a limitation period to which this Division applies, the limitation period is extended by order under this Division, the prior expiration of the limitation period has no effect for the purposes of this Act.

Prior bar
ineffective

62. Where, under this Division, a question arises as to the means of knowledge of a deceased person, the court may have regard to the conduct and statements, oral or in writing, of the deceased person.

Evidence

PART IV.

MISCELLANEOUS.

DIVISION 1.—*Extinction of right and title.*

Debt,
damages,
etc.

63. (1) Subject to subsection (2) of this section, on the expiration of a limitation period fixed by or under this Act for a cause of action to recover any debt damages or other money, the right and title of the person formerly having the cause of action to the debt damages or other money is, as against the person against whom the cause of action formerly lay and as against his successors, extinguished.

(2) Where, before the expiration of a limitation period fixed by or under this Act for a cause of action to recover any debt damages or other money, an action is brought on the cause of action, the expiration of the limitation period does not affect the right or title of the plaintiff to the debt damages or other money—

(a) for the purposes of the action; or

(b) so far as the right or title is established in the action.

(3) This section does not apply to a cause of action to which section 64 or section 65 of this Act applies.

Account

64. (1) Subject to subsection (2) of this section, on the expiration of a limitation period fixed by or under this Act for a cause of action for an account founded on a liability at law to account in respect of any matter, the right and title of the person formerly having the cause of action and of a person claiming through him in respect of that matter is, as against the person against whom the cause of action formerly lay and as against his successors, extinguished.

(2) Where, before the expiration of a limitation period fixed by or under this Act for a cause of action for an account founded on a liability at law to account in respect of any matter, an action is brought on the cause of action, the expiration of the limitation period does not affect the right or title of the plaintiff in respect of that matter—

(a) for the purposes of the action; or

(b) so far as the right or title is established in the action.

(3) This section does not apply to a cause of action to which section 65 of this Act applies.

65. (1) Subject to subsection (2) of this section, on the expiration of a limitation period fixed by or under this Act for a cause of action specified in column 1 of Schedule Four to this Act, the title of a person formerly having the cause of action to the property specified opposite the cause of action in column 2 of that Schedule is, as against the person against whom the cause of action formerly lay and as against his successors, extinguished.

Property
cf. 2 & 3
Geo. 6, c. 21,
ss. 3 (2),
7 (3), 16
Schedule
Four

(2) Where, before the expiration of a limitation period fixed by or under this Act for a cause of action specified in column 1 of that Schedule, an action is brought on the cause of action, the expiration of the limitation period does not affect the right or title of the plaintiff to property specified in column 2 of that Schedule in respect of which the action is brought—

- (a) for the purposes of the action; or
- (b) so far as the right or title is established in the action.

66 (1) Where—

Instrument
under Real
Property
Act

- (a) an instrument is executed which, if registered, would take effect as a deed;
- (b) a cause of action founded on the instrument accrues; and
- (c) before the material date, the instrument is registered,

a right or title which would, apart from this section, be extinguished by this Act on the expiration of the limitation period fixed by or under this Act for the cause of action is extinguished on the material date and not before.

(2) For the purposes of this section—

- (a) the “material date” is the date of the expiration of the limitation period which would be fixed by or under this Act for the cause of action if the instrument were a deed; and
- (b) “registered” means registered under the Real Property Act, 1900.

67. (1) Where—

Future
interest
in land
cf. 2 & 3
Geo. 6, c. 21,
s. 6 (5)

- (a) the title of a person to land for an estate or interest in possession is extinguished by this Act;

- (b) at any time while he has that title he is also entitled to the same land for an estate or interest in remainder or reversion or any other future estate or interest; and
- (c) the land is not, before the estate or interest mentioned in paragraph (b) of this subsection becomes a present estate or interest, recovered by virtue of an intermediate estate or interest,

the estate or interest mentioned in paragraph (b) of this subsection is, on the date on which it becomes a present estate or interest, extinguished.

(2) For the purposes of this section, a person contingently entitled to an estate or interest in reversion or remainder or any other future estate or interest, or having such an estate or interest vested in him subject to divesting in any event, is entitled to the estate or interest.

Possessory
lien

68. Notwithstanding this Division, where—

- (a) a person is in possession of goods; and
- (b) he has a lien on the goods for a debt or other money claim payable by a second person,

the right and title of the first person to the debt or other money claim is, as against the second person and his successors, saved from extinction under this Division for so long as a cause of action of the second person or of a person claiming through the second person for the conversion or detention of the goods or to recover the proceeds of sale of the goods has not accrued or is not barred by this Act, but only so far as is necessary to support and give effect to the lien.

DIVISION 2.—*Arbitration.*

Interpre-
tation

cf. 2 & 3
Geo. 6, c. 21,
s. 27 (6),
(7)

69. (1) In this Division, the expression “provisions for arbitration” means—

- (a) the provisions of an agreement to submit present or future differences to arbitration, whether an arbitrator is named in the agreement or not; and
- (b) the provisions of any Act regulations rules by-laws order or scheme requiring or permitting the determination of any matter by arbitration or relating to such an arbitration.

cf. Act No.
29, 1902,
s. 3

(2) Where the provisions for arbitration are or include the provisions of any Act regulations by-laws order or scheme, this Division has effect subject to the latter provisions.

70. (1) This Act applies to an arbitration in like manner as it applies to an action.

Applica-
tion of
this Act
cf. 2 & 3
Geo. 6, c. 21,
s. 27 (1)

(2) An arbitration for any difference or matter under any provisions for arbitration is not maintainable if commenced after the date of the expiration of the period of limitation fixed by or under this Act for a cause of action in respect of the same difference or matter.

71. Where, by a term of any provisions for arbitration, a cause of action with respect to any difference or matter referable to arbitration under the provisions does not accrue until the making of an award or the happening of some other event in or relating to the arbitration or does not accrue at all, the cause of action nevertheless accrues, for the purposes of the application of this Division to an arbitration under the provisions, on the date on which it would accrue but for that term.

Accrual
cf. 2 & 3
Geo. 6, c. 21,
s. 27 (2)

72. (1) For the purposes of this Division—

Commence-
ment
cf. 2 & 3
Geo. 6, c. 21,
s. 27 (3)

(a) where the provisions for arbitration require or permit a party to the arbitration to give notice in writing to another party—

(i) requiring the other party to appoint or concur in appointing an arbitrator; or

(ii) requiring the other party to submit or concur in submitting a difference or matter to a person named or designated in the provisions for arbitration as arbitrator; or

(b) where, in a case to which paragraph (a) of this subsection does not apply, a party to the arbitration takes a step required or permitted by the provisions for arbitration for the purpose of bringing a difference or matter before an arbitrator and gives to another party notice in writing of the taking of the step,

the arbitration is commenced, as between the party giving the notice and the party to whom the notice is given, on the date on which the notice is given.

(2) For the purpose of subsection (1) of this section, the date on which a notice is given is the date, or the earlier or earliest of the dates, when the party giving the notice—

cf. 2 & 3
Geo. 6, c. 21,
s. 27 (4)

(a) delivers it to the party to whom it is to be given;

(b) leaves it at the usual or last-known place of business or of abode of the party to whom it is to be given;

- (c) posts it by the certified mail service to the party to whom it is to be given at his usual or last-known place of business or of abode; or
- (d) gives the notice in a manner required or permitted by the provisions for arbitration.

Extension
of limita-
tion period
cf. 2 & 3
Geo. 6, c. 21,
s. 27 (5)

73. (1) Where a court—

- (a) gives leave to revoke a submission under section 4 of the Arbitration Act, 1902;
- (b) removes an arbitrator or umpire under subsection (1) of section 13 of that Act; or
- (c) sets aside an award under subsection (2) of section 13 of that Act,

the court may at the same time or within six months afterwards, whether or not the limitation period fixed by or under this Act for the bringing of an action or for the commencement of an arbitration with respect to the difference or matter under arbitration has expired, order that the whole or any part of the time between the date of the commencement of the arbitration and the date of the order under this section do not count in the reckoning of the limitation period.

(2) Where, after the expiration of a limitation period fixed by or under this Act, a court makes an order under this section, the prior expiration of the limitation period has no effect for the purposes of this Act.

DIVISION 3.—General.

Set off,
etc.
cf. 2 & 3
Geo. 6, c. 21,
s. 28

74. Where, in an action (in this section called the principal action), a claim is made by way of set off, counterclaim or cross action, the claim, for the purposes of this Act—

- (a) is a separate action; and
- (b) is, as against a person against whom the claim is made, brought on the only or earlier of such of the following dates as are applicable—
 - (i) the date on which he becomes a party to the principal action; and
 - (ii) the date on which he becomes a party to the claim.

Joint right

75. Where, were it not for this Act, two or more persons would have a cause of action jointly and, by this Act, an action on the cause of action is not maintainable by one or

more of them, an action on the cause of action is nonetheless maintainable by the other or others of them and judgment may be given accordingly.

76. Where, were it not for this Act, two or more persons would be liable on a cause of action jointly and, by this Act, an action on the cause of action is not maintainable against one or more of them, an action on the cause of action is nonetheless maintainable against the other or others of them and judgment may be given accordingly.

Joint
liability
cf. 9 Geo. 4,
c. 14, s. 1
Act No. 21,
1899, s. 39

77. (1) Rules of court not inconsistent with this Act may be made for the regulation of the practice and procedure of the court in proceedings under sections 22, 58, 59, 60 and 73 of this Act.

Rules of
Court

(2) Rules so made shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the rules; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

(3) If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the rules have been laid before that House disallowing any rule or part of a rule, that rule or part shall thereupon cease to have effect.

(4) The power to make rules given by this section may be exercised—

- (a) in relation to proceedings in the Supreme Court, by a majority of the judges of the Supreme Court or any five of them; and
- (b) in relation to proceedings in the District Courts, by a majority of the District Court judges; and
- (c) in relation to proceedings in courts of petty sessions exercising jurisdiction under the Small Debts Recovery Act, 1912, by the Governor.

SCHEDULES.

SCHEDULE ONE
REPEAL OF ENACTMENTS

Sec. 4 (1), (2).

Year and chapter or number	Subject or title	Extent of repeal
<i>Part A—Imperial Acts</i>		
31 Eliz. 1, c. 5.	The Common Informers Act, 1588.	Section 5.
21 Jac. 1, c. 16.	The Limitation Act, 1623.	Sections 3, 4 and 7.
4 and 5 Anne, c. 3 (or 4 and 5 Anne, c. 16).	The Administration of Justice Act, 1705.	Sections 17, 18 and 19.
9 Geo. 3, c. 16.	The Crown Suits Act, 1769.	The whole Act.
<i>Part B—New South Wales Acts.</i>		
4 Wm. 4, No. 17.	An Act for adopting and applying a certain Act of Parliament for rendering a written Memorandum necessary to the validity of certain Promises and Engagements.	The unrepealed portion.
8 Wm. 4, No. 3.	An Act for adopting a certain Act of Parliament passed in the Third and Fourth Years of the Reign of His present Majesty King William the Fourth and applying the same in the Administration of Justice in New South Wales in like manner as other Laws of England are applied therein.	The whole Act.
5 Vic. No. 9.	An Act for the further amendment of the Law and for the better advancement of Justice.	The unrepealed portion.
26 Vic. No. 12.	Trust Property Act of 1862.	The unrepealed portion.
47 Vic. No. 7.	Limitation of Actions for Trespass Act of 1884.	The unrepealed portion.

SCHEDULE TWO

Sec. 4 (3).

AMENDMENT OF ACTS

Column 1		Column 2
Year and Number of Act	Short title	Amendment
1897 No. 31.	Compensation to Relatives Act of 1897.	Section 5— Omit the words “, and every such action shall be commenced within six years after the death of such deceased person”. Section 6c— Subsection (2)— Omit the subsection.
1899 No. 18.	Landlord and Tenant Act of 1899.	Section 8— Subsection (3)— After the word “arrears” insert the words “the recovery of which by action is not, on the date on which the action in ejectment is brought, barred by the Limitation Act, 1967,”. Subsection (5)— After the word “arrear” insert the words “the recovery of which by action is not, on the date on which the action in ejectment is brought, barred by the Limitation Act, 1967,”. Section 9— Subsection (1)— After the word “arrear” insert the words “on account of rent the recovery of which by action is not, on the date on which the action in ejectment is brought, barred by the Limitation Act, 1967,”. Section 10— Subsection (1)— After the word “arrears” insert the words “the recovery of which by action is not, on the date on which the action is brought, barred by the Limitation Act, 1967,”. Section 18— Subsection (2)— After the word “arrear” insert the words “the recovery of which by action is not, on the date on which the action is brought, barred by the Limitation Act, 1967,”.
1925 No. 14.	Trustee Act, 1925.	Section 69— Omit the section.
1940 No. 32.	Trustee and Wills (Emergency Provisions) Act, 1940.	Section 12— Omit the section.
1944 No. 28.	Law Reform (Miscellaneous Provisions) Act, 1944.	Section 2— Omit subsection (3).

SCHEDULE THREE

Sec. 4 (5)

CITATION OF ACTS

Column 1		Column 2
Year and Number of Act	Short title	Citation
1897 No. 31.	Compensation to Relatives Act of 1897.	Compensation to Relatives Act, 1897-1967.
1899 No. 18.	Landlord and Tenant Act of 1899.	Landlord and Tenant Act, 1899-1967.
1919 No. 6.	Conveyancing Act, 1919.	Conveyancing Act, 1919-1967.
1925 No. 14.	Trustee Act, 1925.	Trustee Act, 1925-1967.
1940 No. 32.	Trustee and Wills (Emergency Provisions) Act, 1940.	Trustee and Wills (Emergency Provisions) Act, 1940-1967.
1944 No. 28.	Law Reform (Miscellaneous Provisions) Act, 1944.	Law Reform (Miscellaneous Provisions) Act, 1944-1967.

SCHEDULE FOUR

Sec. 65

EXTINCTION OF RIGHT AND TITLE

Column 1	Column 2
Cause of action	Property
For conversion or detention of goods.	The goods.
To recover land.	The land.
To enforce an equitable estate or interest in land.	The equitable estate or interest.
To redeem mortgaged property.	The mortgaged property.
To recover principal money secured by mortgage or to recover possession of mortgaged property from a mortgagor or to foreclose the equity of redemption of mortgaged property, within the meaning of section 42 of this Act.	The mortgaged property.
To recover trust property or property into which trust property can be traced.	The trust property or the property into which the trust property can be traced, as the case may be.

APPENDIX H

THE NEW YORK STATUTE

SECTIONS 201 TO 218 OF THE NEW YORK CIVIL PRACTICE LAW AND RULES (CHAPTER EIGHT OF THE CONSOLIDATED LAWS OF NEW YORK)

201. Application of article

An action, including one brought in the name or for the benefit of the state, must be commenced within the time specified in this article unless a different time is prescribed by law or a shorter time is prescribed by written agreement. No court shall extend the time limited by law for the commencement of an action.

202. Cause of action accruing without the state

An action based upon a cause of action accruing without the state cannot be commenced after the expiration of the time limited by the laws of either the state or the place without the state where the cause of action accrued, except that where the cause of action accrued in favor of a resident of the state the time limited by the laws of the state shall apply.

203. Method of computing periods of limitation generally

(a) *Accrual of cause of action and interposition of claim.* The time within which an action must be commenced, except as otherwise expressly prescribed, shall be computed from the time the cause of action accrued to the time the claim is interposed.

(b) *Claim in complaint.* A claim asserted in the complaint is interposed against the defendant or a co-defendant united in interest with him when:

1. the summons is served upon the defendant; or
2. first publication of the summons against the defendant is made pursuant to an order, and publication is subsequently completed; or
3. an order for a provisional remedy is granted, if, within thirty days thereafter, the summons is served upon the defendant or first publication of the summons against the defendant is made pursuant to an order and publication is subsequently completed, or, where the defendant dies within thirty days after the order is granted and before the summons is served upon him or publication is completed, if the summons is served upon his executor or administrator within sixty days after letters are issued; for this purpose seizure of a chattel in an action to recover a chattel is a provisional remedy; or

4. The summons is delivered for service upon the defendant to the sheriff in a county in which the defendant resides, is employed or is doing business, or if none of the foregoing be known to plaintiff after reasonable inquiry, then in a county in which defendant is known to have last resided, been employed or been engaged in business, or, where the defendant is a corporation, in a county in which it may be served, if the summons is served upon the defendant within sixty days after the period of limitation would have expired but for this provision, or first publication of the summons against the defendant is made pursuant to an order within sixty days after the period of limitation would have expired but for this provision and publication is subsequently completed, or, where the defendant dies within sixty days after the period of limitation would have expired but for this provision and before the summons is served upon him or publication is completed, if the summons is served upon his executor or administrator within sixty days after letters are issued; or
5. in an action to be commenced in a court not of record, the summons is delivered for service upon the defendant to any officer authorized to serve it in a county, city or town in which the defendant resides, is employed or is doing business, or if none of the foregoing be known to the plaintiff after reasonable inquiry, then in a county, city or town in which defendant is known to have last resided, been employed or been engaged in business, or, where the defendant is a corporation, in a county, city or town in which it may be served, if the summons is served upon the defendant within sixty days after the period of limitation would have expired but for this provision; or, where the defendant dies within sixty days after the period of limitation would have expired but for this provision and before the summons is served upon him, if the summons is served upon his executor or administrator within sixty days after letters are issued.

(c) *Defense or counterclaim.* A defense or counterclaim is interposed when a pleading containing it is served. A defense or counterclaim is not barred if it was not barred at the time the claims asserted in the complaint were interposed, except that if the defense or counterclaim arose from the transactions, occurrences, or series of transactions or occurrences, upon which a claim asserted in the complaint depends, it is not barred to the extent of the demand in the complaint notwithstanding that it was barred at the time the claims asserted in the complaint were interposed.

(d) *Effect upon defense or counterclaim of termination of action because of death or by dismissal or voluntary discontinuance.* Where a defendant has served an answer containing a defense or counterclaim and the action is terminated because of the plaintiff's death or by dismissal or voluntary discontinuance, the time which elapsed between the commencement and termination of the action is not a part of the time within which an action must be commenced to recover upon the claim in the defense or counterclaim or the time within which the defense or counterclaim may be interposed in another action brought by the plaintiff or his successor in interest.

(e) *Claim in amended pleading.* A claim asserted in an amended pleading is deemed to have been interposed at the time the claims in the original pleading were interposed, unless the original pleading does not give notice of the transactions occurrences, or series of transactions or occurrences, to be proved pursuant to the amended pleading.

(f) *Time computed from actual or imputed discovery of facts.* Except as provided in article 2 of the uniform commercial code, where the time within which an action must be commenced is computed from the time when facts were discovered or from the time when facts could with reasonable diligence have been discovered, or from either of such times, the action must be commenced within two years after such actual or imputed discovery or within the period otherwise provided, computed from the time the cause of action accrued, whichever is longer.

204. Stay of commencement of action; demand for arbitration

(a) *Stay.* Where the commencement of an action has been stayed by a court or by statutory prohibition, the duration of the stay is not a part of the time within which the action must be commenced.

(b) *Arbitration.* Where it shall have been determined that a party is not obligated to submit a claim to arbitration, the time which elapsed between the demand for arbitration and the final determination that there is no obligation to arbitrate is not a part of the time within which an action upon such claim must be commenced. The time within which the action must be commenced shall not be extended by this provision beyond one year after such final determination.

205. Termination of action

(a) *New action by plaintiff.* If an action is timely commenced and is terminated in any other manner than by a voluntary discontinuance, a dismissal of the complaint for neglect to prosecute the action, or a final judgment upon the merits, the plaintiff, or, if he dies, and the cause of action survives, his executor or administrator, may commence a new action upon the same cause of action within six months after the termination.

(b) *Defense or counterclaim.* Where the defendant has served an answer and the action is terminated in any manner, and a new action upon the same cause of action is commenced by the plaintiff or his successor in interest, the assertion of any cause of action or defense by the defendant in the new action shall be timely if it was timely asserted in the prior action.

(c) *Application.* This section also applies to a proceeding brought under the workmen's compensation law.

206. Computing periods of limitation in particular actions

(a) *Where demand necessary.* Except as provided in article 3 of the uniform commercial code, where a demand is necessary to entitle a

person to commence an action, the time within which the action must be commenced shall be computed from the time when the right to make the demand is complete, except that

1. where a right grows out of the receipt or detention of money or property by a trustee, agent, attorney or other person acting in a fiduciary capacity, the time within which the action must be commenced shall be computed from the time when the person having the right to make the demand discovered the facts upon which the right depends; and
2. where there was a deposit of money to be repaid only upon a special demand, or a delivery of personal property not to be returned specifically or in kind at a fixed time or upon a fixed contingency, the time within which the action must be commenced shall be computed from the demand for repayment or return.

(b) *Based on misconduct of agent.* Where a judgment is entered against a principal in an action based upon an injury resulting from the act or omission of his deputy or agent, the time within which an action by the principal against the deputy or agent to recover damages by reason of such judgment must be commenced shall be computed, from the time when the action against the principal was finally determined. Where an injury results from the representation by a person that he is an agent with authority to execute a contract in behalf of a principal, the time within which an action to recover damages for breach of warranty of authority must be commenced by the person injured against the purported agent shall be computed from the time the person injured discovered the facts constituting lack of authority.

(c) *Based on breach of covenant of seizin or against incumbrances.* In an action based upon breach of a covenant of seizin or against incumbrances, the time within which the action must be commenced shall be computed from an eviction.

(d) *Based on account.* In an action based upon a mutual, open and current account, where there have been reciprocal demands between the parties, the time within which the action must be commenced shall be computed from the time of the last transaction in the account on either side.

207. Defendant's absence from state or residence under false name

If, when a cause of action accrues against a person, he is without the state, the time within which the action must be commenced shall be computed from the time he comes into or returns to the state. If, after a cause of action has accrued against a person, he departs from the state and remains continuously absent therefrom for four months or more, or he resides within the state under a false name which is unknown to the person entitled to commence the action, the time of his absence or residence within the state under such a false name is not a part of the time within which the action must be commenced. This section does not apply:

1. while there is in force a designation, voluntary or involuntary, made pursuant to law, of a person to whom a summons may be delivered within the state with the same effect as if served personally within the state; or
2. while a foreign corporation has one or more officers or other persons in the state on whom a summons against such corporation may be served; or
3. while jurisdiction over the person of the defendant can be obtained without personal delivery of the summons to him within the state.

208. Infancy, insanity or imprisonment

If a person entitled to commence an action is, at the time the cause of action accrues, under the age of twenty-one years, insane or imprisoned on a criminal charge or conviction for a term less than for life, and the time otherwise limited for commencing the action is three years or more and expires no later than three years after the disability ceases, or the person under the disability dies, the time within which the action must be commenced shall be extended to three years after the disability ceases or the person under the disability dies, whichever event first occurs; if the time otherwise limited is less than three years, the time shall be extended by the period of disability. The time within which the action must be commenced shall not be extended by this provision beyond ten years after the cause of action accrues, except where the person was under the age of twenty-one years. This section shall not apply to an action to recover a penalty or forfeiture, or against a sheriff or other officer for an escape.

209. War

(a) *Cause of action accruing in foreign country.* Where a cause of action, whether originally accrued in favor of a resident or non-resident of the state, accrued in a foreign country with which the United States or any of its allies were then or subsequently at war, or territory then or subsequently occupied by the government of such foreign country, the time which elapsed between the commencement of the war, or of such occupation and the termination of hostilities with such country, or of such occupation, is not a part of the time within which the action must be commenced. This section shall neither apply to nor in any manner affect an action brought pursuant to section six hundred twenty-five of the banking law against a banking organization or against the superintendent of banks.

(b) *Right of alien.* Where a person is unable to commence an action in the courts of the state because any party is an alien subject or citizen of a foreign country at war with the United States or any of its allies, whether the cause of action accrued during or prior to the war, the time which elapsed between the commencement of the war and the termination of hostilities with such country is not a part of the time within which the action must be commenced.

(c) *Non-enemy in enemy country or enemy-occupied territory.* Where a person entitled to commence an action, other than a person entitled to the benefits of subdivision (b), is a resident of, or a sojourner in, a foreign country with which the United States or any of its allies are at war, or territory occupied by the government of such foreign country, the period of such residence or sojourn during which the war continues or the territory is so occupied is not a part of the time within which the action must be commenced.

210. Death of claimant or person liable; cause of action accruing after death and before grant of letters

(a) *Death of claimant.* Where a person entitled to commence an action dies before the expiration of the time within which the action must be commenced and the cause of action survives, an action may be commenced by his representative within one year after his death.

(b) *Death of person liable.* The period of eighteen months after the death, within or without the state, of a person against whom a cause of action exists is not a part of the time within which the action must be commenced against his executor or administrator.

(c) *Cause of action accruing after death and before grant of letters.* In an action by an executor or administrator to recover personal property wrongfully taken after the death and before the issuance of letters, or to recover damages for taking, detaining or injuring personal property within that period, the time within which the action must be commenced shall be computed from the time the letters are issued or from three years after the death, whichever event first occurs. Any distributee, next of kin, legatee or creditor who was under a disability prescribed in section 208 at the time the cause of action accrued, may, within two years after the disability ceases, commence an action to recover such damages or the value of such property as he would have received upon a final distribution of the estate if an action had been timely commenced by the executor or administrator.

211. Actions to be commenced within twenty years.

(a) *On a bond.* An action to recover principal or interest upon a written instrument evidencing an indebtedness of the state of New York or of any person, association or public or private corporation, originally sold by the issuer after publication of an advertisement for bids for the issue in a newspaper of general circulation and secured only by a pedge of the faith and credit of the issuer, regardless of whether a sinking fund is or may be established for its redemption, must be commenced within twenty years after the cause of action accrues. This subdivision does not apply to actions upon written instruments evidencing an indebtedness of any corporation, association or person under the jurisdiction of the public service commission, the interstate commerce commission, the federal communications commission, the civil aeronautics board, the federal power commission, or any regulatory commission or board of a state or of the federal government. This

subdivision applies to all causes of action, including those barred on April eighteenth, nineteen hundred fifty, by the provisions of the civil practice act then effective.

(b) *On a money judgment.* A money judgment is presumed to be paid and satisfied after the expiration of twenty years from the time when the party recovering it was first entitled to enforce it. This presumption is conclusive, except as against a person who within the twenty years acknowledges an indebtedness, or makes a payment, of all or part of the amount recovered by the judgment, or his heir or personal representative, or a person whom he otherwise represents. Such an acknowledgment must be in writing and signed by the person to be charged. Property acquired by an enforcement order or by levy upon an execution is a payment, unless the person to be charged shows that it did not include property claimed by him. If such an acknowledgment or payment is made, the judgment is conclusively presumed to be paid and satisfied as against any person after the expiration of twenty years after the last acknowledgment or payment made by him. The presumption created by this subdivision may be availed of under an allegation that the action was not commenced within the time limited.

(c) *By state for real property.* The state will not sue a person for or with respect to real property, or the rents or profits thereof, by reason of the right or title of the state to the same, unless the cause of action accrued, or the state, or those from whom it claims, have received the rents and profits of the real property or of some part thereof, within twenty years before the commencement of the action.

(d) *By grantee of state for real property.* An action shall not be commenced for or with respect to real property by a person claiming by virtue of letters patent or a grant from the state, unless it might have been maintained by the state, as prescribed in this section, if the patent or grant had not been issued or made.

212. Actions to be commenced within ten years

(a) *Possession necessary to recover real property.* An action to recover real property or its possession cannot be commenced unless the plaintiff, or his predecessor in interest, was seized or possessed of the premises within ten years before the commencement of the action.

(b) *Annulment of letters patent.* Where letters patent or a grant of real property, issued or made by the state, are declared void on the ground of fraudulent suggestion or concealment, forfeiture, mistake or ignorance of a material fact, wrongful detaining or defective title, an action to recover the premises may be commenced by the state or by a subsequent patentee or grantee, or his successor in interest, within ten years after the determination is made.

(c) *To redeem from a mortgage.* An action to redeem real property from a mortgage with or without an account of rents and profits may be commenced by the mortgagor or his successors in interest, against the mortgagee in possession, or against the purchaser of the mortgaged

premises at a foreclosure sale in an action in which the mortgagor or his successors in interest were not excluded from their interest in the mortgaged premises, or against a successor in interest of either, unless the mortgagee, purchaser or successor was continuously possessed of the premises for ten years after the breach or non-fulfillment of a condition or covenant of the mortgage, or the date of recording of the deed of the premises to the purchaser.

213. Actions to be commenced within six years: where not otherwise provided for; on contract; on sealed instrument; on bond or note, and mortgage upon real property; by state based on misappropriation of public property; based on mistake; to establish a will; by corporation against director, officer or stockholder; based on fraud

The following actions must be commenced within six years:

1. an action for which no limitation is specifically prescribed by law;
2. an action upon a contractual obligation or liability express or implied, except as provided in article 2 of the uniform commercial code;
3. an action upon a sealed instrument;
4. an action upon a bond or note, the payment of which is secured by a mortgage upon real property, or upon a bond or note and mortgage so secured, or upon a mortgage of real property, or any interest therein;
5. an action by the state based upon the spoliation or other misappropriation of public property; the time within which the action must be commenced shall be computed from discovery by the state of the facts relied upon;
6. an action based upon mistake;
7. an action to establish a will; where the will has been lost, concealed or destroyed, the time within which the action must be commenced shall be computed from the time when the plaintiff or his predecessor in interest discovered the loss, concealment or destruction, or could with reasonable diligence have discovered it; and
8. an action by or on behalf of a corporation against a present or former director, officer or stockholder for an accounting, or to procure a judgment on the ground of fraud, or to enforce a liability, penalty or forfeiture, or to recover damages for waste or for an injury to property or for an accounting in conjunction therewith.
9. an action based upon fraud; the time within which the action must be commenced shall be computed from the time the plaintiff or the person under whom he claims discovered the fraud, or could with reasonable diligence have discovered it.

214. Actions to be commenced within three years: for non-payment of money collected on execution; for penalty created by statute; to recover chattel; for injury to property; for personal injury; for malpractice; to annul a marriage on the ground of fraud

The following actions must be commenced within three years:

1. an action against a sheriff, constable or other officer for the non-payment of money collected upon an execution;
2. an action to recover upon a liability, penalty or forfeiture created or imposed by statute except as provided in sections 213 and 215;
3. an action to recover a chattel or damages for the taking or detaining of a chattel;
4. an action to recover damages for an injury to property;
5. an action to recover damages for a personal injury except as provided in section 215;
6. an action to recover damages for malpractice; and
7. an action to annul a marriage on the ground of fraud; the time within which the action must be commenced shall be computed from the time the plaintiff discovered the facts constituting the fraud, but if the plaintiff is a person other than the spouse whose consent was obtained by fraud, the time within which the action must be commenced shall be computed from the time, if earlier, that that spouse discovered the facts constituting the fraud.

215. Actions to be commenced within one year: against sheriff, coroner or constable; for escape of prisoner; for assault, battery, false imprisonment, malicious prosecution, libel or slander; for violation of right of privacy; for penalty given to informer; on arbitration award

The following actions shall be commenced within one year:

1. an action against a sheriff, coroner or constable, upon a liability incurred by him by doing an act in his official capacity or by omission of an official duty, except the non-payment of money collected upon an execution;
2. an action against an officer for the escape of a prisoner arrested or imprisoned by virtue of a civil mandate;
3. an action to recover damages for assault, battery, false imprisonment, malicious prosecution, libel, slander, false words causing special damages, or a violation of the right of privacy under section fifty-one of the civil rights law;

4. an action to enforce a penalty or forfeiture created by statute and given wholly or partly to any person who will prosecute; if the action is not commenced within the year by a private person, it may be commenced on behalf of the state, within three years after the commission of the offense, by the attorney-general or the district attorney of the county where the offense was committed; and
5. an action upon an arbitration award.

216. Abbreviation of period to one year after notice

- (a) *Action to recover money.* 1. No action for the recovery of any sum of money due and payable under or on account of a contract, or for any part thereof, shall be commenced by any person who has made claim to the sum, after the expiration of one year from the giving of notice, as hereinafter provided, to the claimant that an action commenced by another person is pending to recover the sum, or any part thereof, exceeding fifty dollars in amount. This limitation shall not be construed to enlarge the time within which the cause of action of the claimant would otherwise be barred.
2. If any person shall make claim for the recovery of any sum of money due and payable under or on account of a contract, and an action has theretofore been, or shall thereafter be, commenced by another person to recover the sum, or any part thereof, exceeding fifty dollars in amount, the defendant in such action may, within twenty days from the date of service upon him of the complaint or from the date of receipt by him of the claim, whichever occurs later, make a motion before the court in which the action is pending for an order permitting the defendant to give notice to the claimant that the action is pending. The court in which the action is pending shall grant the order where it appears that a person not a party to the action has made claim against the defendant for the sum of money, or any part thereof, exceeding fifty dollars in amount; that the action was brought without collusion between the defendant and the plaintiff; and that the claimant cannot, with due diligence, be served with process in such a manner as to obtain jurisdiction over his person. The order shall provide, among such other terms and conditions as justice may require, that notice shall be given to the claimant by sending by registered mail a copy of the summons and complaint in the action and the order and a notice addressed to the claimant at his last known address. In the event that registration of mail directed to any country or part thereof shall be discontinued or suspended, notice to a claimant whose last known address is within such country or part thereof shall be given by ordinary mail, under such terms and conditions as the court may direct. Proof that the notice has been mailed shall be filed within ten days from the date of the order; otherwise the order becomes inoperative. Upon such filing, notice shall be deemed to have been given on the tenth day after the date of such order.

3. Upon proof by affidavit or otherwise, to the satisfaction of the court, that the conditions of this subdivision have been satisfied and that there is no collusion between the claimant and the defendant, the court shall make an order staying further prosecution of the action for a period not to exceed one year from the date when the notice shall have been given to the claimant. At the time of the granting of such order or at any time thereafter, the court, upon the motion of any party, shall, as a condition of the granting of the order or its continuation, impose upon the defendant such terms as justice may require as to the furnishing of an undertaking in an amount to be fixed by the court. The stay shall be vacated and the undertaking, if any has been given, may be discharged or modified, as justice may require, upon proof to the court by any party to the action that the claimant has intervened or has instituted another action in any court of this state to recover the said sum of money, or any part thereof, exceeding fifty dollars.
4. A motion for any relief as prescribed in this subdivision shall be made on notice to all other parties to the action.
5. Whenever claims are made by two or more persons, each claiming to be, to the exclusion of the other, the duly authorized deputy, officer or agent to demand, receive, collect, sue for or recover the same sum of money due and payable under or on account of a contract, or any part thereof, exceeding fifty dollars in amount, for and on behalf of the same person, each person making such a claim shall be deemed an adverse claimant. Notwithstanding that an action has been commenced in the name of or on behalf of the person for whom he claims to be the duly authorized deputy, officer or agent, any such adverse claimant may be notified of the pendency of an action as provided in this subdivision and may intervene in the action and be designated as claiming to be or as the alleged deputy, officer or agent.
6. Whenever an action has been commenced for the recovery of any sum of money exceeding fifty dollars due and payable under or on account of a contract and the records of the defendant show that a person other than the plaintiff has the right, exclusive of other deputies, officers or agents of the plaintiff, to demand, sue for and recover the same sum of money, or any part thereof, exceeding fifty dollars in amount, either in his own name, or his own behalf, or as the authorized deputy, officer or agent for the plaintiff, and the defendant has received no notice of transfer, revocation, or other change in right or authority acceptable to it, the person so appearing on the records shall be deemed to have made an adverse claim to the sum of money and may be treated as an adverse claimant.

(b) *Action to recover property.* When an action has been commenced to recover specific personal property, including certificates of stocks, bonds, notes or other securities or obligations, exceeding fifty dollars in value, held by the defendant within the state, or to enforce a vested or

contingent interest or lien upon such property, and a person not a party to the action asserts a claim to the whole or any part of the same property or to a right, interest or lien upon it which is adverse to the plaintiff's claim, and the court in which the action is pending has no jurisdiction over the adverse claimant to direct the issuance of process or if the same be issued it would be without effect notwithstanding that the action seeks to have declared, enforced, regulated, defined or limited, rights, interests or liens upon specific personal property within the state, the defendant in the action may within twenty days from the date of service upon him of the complaint or within twenty days of the date of the receipt by him of the adverse claim, whichever shall occur later, make a motion before the court for leave to give notice to the adverse claimant of the pending action in the same manner as provided in subdivision (a). Upon the granting of such an order, the provisions of subdivision (a) shall apply insofar as they are compatible with the subject matter of the action.

217. Proceeding against body or officer; four months

Unless a shorter time is provided in the law authorizing the proceeding, a proceeding against a body or officer must be commenced within four months after the determination to be reviewed becomes final and binding upon the petitioner or the person whom he represents in law or in fact, or after the respondent's refusal, upon the demand of the petitioner or the person whom he represents to perform its duty; or with leave of the court where the petitioner or the person whom he represents, at the time such determination became final and binding upon him or at the time of such refusal, was under a disability specified in section 208, within two years after such time.

218. Transitional provisions

(a) *Actions barred at effective date.* Nothing in this article shall authorize any action to be commenced which is barred when this article becomes effective, except insofar as the right to commence the action may be revived by an acknowledgment or payment.

(b) *Cause of action accrued and not barred at effective date.* Where a cause of action accrued before, and is not barred when this article becomes effective, the time within which an action must be commenced shall be the time which would have been applicable apart from the provisions of this article, or the time which would have been applicable if the provisions of this article had been in effect when the cause of action accrued, whichever is longer.

APPENDIX I

THE AMERICAN UNIFORM ACT

The American National Conference of Commissioners on Uniform State Laws promulgated this statute in 1939. The Conference withdrew it from "active promulgation" in 1966.

UNIFORM STATUTE OF LIMITATIONS ACT

AN ACT PROVIDING FOR PERIODS OF LIMITATION WITHIN WHICH ACTIONS MAY BE COMMENCED IN THE COURTS OF THIS STATE AND TO MAKE UNIFORM THE LAWS OF THE STATES IN REFERENCE THERETO.

Be it enacted, etc. . . .

SECTION 1. *Limitation of Time for Commencing.* A civil action or proceeding to enforce a cause of action mentioned in this act may be commenced within the period of limitation herein prescribed, and not thereafter, except as herein otherwise provided.

SECTION 2. *Reckoning of Period.* The periods herein prescribed shall be reckoned from the date when the cause of action accrued, except as herein otherwise provided.

SECTION 3. *Future Rights of Action.* The periods of limitation prescribed in this act shall apply only to rights of action accruing after the date when this act takes effect; actions accruing on or prior to that date shall be governed by the law as it existed prior to taking effect of this act.

SECTION 4. *Contrary Agreements.* No agreement for a period of limitation different from the period prescribed in this act shall be valid.

SECTION 5. *Suspension of Reckoning of Period.* The events or conditions which may operate to suspend, toll, interrupt or extend the running of the periods prescribed are not affected by this act.

(It is deemed impractical to attempt to unify the various provisions of the several States relative to the events operating to suspend, toll, interrupt or extend the running of the limitation periods. It is suggested that in lieu of section 5, the "events and conditions" having such effect be here set out.)

SECTION 6. *Actions for the Recovery of Real Property.* In the actions mentioned in this section the periods of limitation shall be as follows:

(1) Actions for the recovery of real property sold on execution, brought by the execution debtor or by his heirs or by any person claiming under him by title acquired after the date of judgment, five years after the date of the (recording) filing for record of the deed made in pursuance of the sale, in the county where the land is situated.

(2) Actions for the recovery of real property sold under order of court, five years after the date of the (recording) filing for record of the deed made in pursuance of the sale, in the county where the land is situated.

(3) Actions for the recovery of real property sold for taxes, two years after the date of the (recording) filing for record of the tax deed, in the county where the land is situated.

(4) Actions for the forcible entry or detention of real property, two years.

(5) Actions for the recovery of real property not herein otherwise provided for, and where there has been occupancy by adverse possession under color of title, seven years; where not under color of title, fifteen years.

SECTION 7. *Other Actions.* The periods of limitations provided for in this section apply to civil actions not covered by the preceding section. In the actions mentioned in this section the periods of limitation shall be as follows:

(1) Actions upon any agreement, contract or promise in writing, five years.

(2) Actions upon a contract, not in writing, whether express or implied, three years.

(3) Actions upon the official bond or undertaking of an executor, administrator, guardian, or any other public or private officer, or upon the bond or undertaking in any case whatever, required by statute, or against the surety upon such bond, five years.

(4) Actions to recover a statutory penalty or forfeiture, one year, except where the statute imposing it prescribes the period.

(5) Actions upon liabilities created by statute other than a forfeiture or penalty, three years.

(6) (a) Actions for trespass on real property, two years.

(b) Actions for taking, detaining, converting, or injuring personal property, including actions for the specific recovery of personal property, two years.

(7) Actions for relief on the ground of fraud, two years after the date the injured party discovered the fraud, or after the date when by due diligence he could have discovered the fraud.

(8) Actions for libel or slander, or for assault or battery, one year.

(9) Actions for malicious prosecution, false arrest or imprisonment, and malicious attachment, one year after the date of the termination of the suit or imprisonment or prosecution or proceeding as the case may be.

(10) Actions for death by wrongful act, one year.

(11) Actions for injury to the person not herein otherwise enumerated, two years.

(12) Actions for damage by unfair trade, imitation of trademark, slander of title or quality, copyright infringement, unfair competition, boycotting, persuasion of breach of contract, or other acts unlawfully injuring a business or occupation, one year after the date when knowledge of the damage and of the person causing the damage was discovered or might by due diligence have been discovered by the plaintiff.

(13) Actions for relief not herein enumerated, two years.

SECTION 8. *Severability Clause.* If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 9. *Interpretation.* This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

SECTION 10. *Short title.* This act may be cited as the Uniform Statute of Limitations Act.

SECTION 11. *Repealing Clause.* All acts or parts of acts which are contrary to or inconsistent with the provisions of this act are hereby repealed.

SECTION 12. *Effect.* This act shall take effect and be in force from and after . . .

APPENDIX J

TABLES SHOWING SPECIAL PERIODS FOR BRINGING ACTIONS, GIVING NOTICE OF CLAIMS AND TAKING APPEALS UNDER ONTARIO STATUTES

1. TIMES WITHIN WHICH AN ACTION MUST BE COMMENCED TO RECOVER DAMAGES OR PROPERTY

The Assessment Act c. 23

- s. 88 no action etc., regarding assessments excepting
within *60 days* of return of roll.
(1960-61, c. 4, s. 13)

- s. 189 sale for arrears of taxes binding if land not
redeemed within *1 year*.

The Assignments and Preferences Act c. 25

- s. 26 (1) no time limit.
- (2) have *30 days* after receipt of notice to bring
action against assignee. More time may be
allowed by Judge.

The Bulk Sales Act c. 43

- s. 19 no action to void etc., a sale in bulk unless
brought before *6 months* have elapsed beyond
filing of documents under s. 11.

The Certification of Titles Act c. 48

- s. 16 (1) *6 years* to claim against fund to compensate a
person wrongfully deprived.

The Coroners Act c. 69

- s. 19 (2), (4) can commence action within *1 year* against
coroner who conducts inquest in contravention
of s. 19.

The Corporations Act c. 71

- s. 36 (2) no liability on decrease of issued capital unless
company sued within *6 months* of supplementary
letters patent and execution unsatisfied *NOR*
unless shareholder sued within *2 years*.

s. 71*d* action *vs.* insiders to be brought within 2 years of transaction. (1966, c. 28)

s. 73 (2) director of company not liable for wages unless company sued within 6 months of due date etc. AND director sued while a director or within 6 months of ceasing so to be.

s. 327 (6) shareholder may claim share from Public Trustee from liquidation of company within 10 years, after that from Lt.-Governor in Council.

s. 329 (1) Liability of shareholders to creditors lasts for 1 year from date of dissolution.

The Crown Timber Act c. 83

s. 21 if seized timber not claimed within 30 days of seizure it is forfeited to the Crown.

The Dentistry Act c. 91

s. 29 action for malpractice etc., to be commenced within 6 months of date when matter complained of terminated.

The Department of Municipal Affairs Act c. 98

s. 53 (3) right to apply for conveyance and tender payment for land vested in municipality for arrears of taxes expires 6 months after "further notice" under subsection 2.

The Election Act c. 118

s. 184 action to recover penalties to be commenced within 4 months.

s. 189 (1) claim against candidate for election expenses to be sent in within 60 days or right to recover is barred.

(2) death of claimant extends period to 1 month after probate or administration obtained.

The Embalmers and Funeral Directors Act c. 120

s. 21 limitation period on actions for negligence etc., is 3 months.

The Expropriations Act, 1968-69

s. 22 (1) claim for compensation for injurious affection to be brought within 1 year.

- s. 22 (2) *idem* where owner under disability, action to be brought within *1 year* of death or end of disability.

The Fatal Accidents Act

c. 138

- s. 5 action to be commenced within *12 months*.

The Gaming Act

- s. 3 may recover money etc., lost at one sitting to total of \$40 or more within *3 months* of payment.

The Highway Improvement Act

c. 171

- s. 10 (1), (2), claim to compensation must be filed within
(3) *6 months* after notice; claim for injurious affection, within *6 months* after injury; or if injury continuing, within *1 year* of time injury became known to claimant.
- s. 33 (5) limitation of action for damages for default—*3 months*.

The Highway Traffic Act

c. 172

- s. 147 (1) no action for damages after *12 months*.
- (2) if death involved see *The Fatal Accidents Act* (*12 months*).
- (3) lapse of time no bar to counterclaim.

The Insurance Act

c. 190

- s. 111 (2) action to be brought within *1 year*.
(s.c. 14)
- s. 173 no action after *1 year* from furnishing s. 170 evidence or more than *6 years* from event, whichever expires first.
- s. 204 (2) action to be brought within *1 year*.
(s.c. 6 (3))
- s. 221 (1) action to be brought within *1 year*.
- ss. 226 (g) action to be brought within time specified in contract, but in no event shall the time be less than *1 year*.

The Junior Farmer Establishment Act c. 198

- s. 26 (4) a claim for loss by bank of amount guaranteed to be made not sooner than *90 days* and not later than *1 year* after loan expires.
(1962-63, c. 66, s. 11)

The Lakes and Rivers Improvement Act c. 203

- s. 81 (1) claims under Part VI to be brought within *1 year*.

The Land Titles Act c. 204

- s. 57 no title in derogation of title of registered owner may be required by prescription.
- s. 63 (3) *6 years* to claim against Fund to compensate person wrongfully deprived.
- s. 124 (1) wife may be required to support claim to dower within *30 days*.
- (2) if claim not supported within *30 days* land is free of dower.
- (3) if wife claims right within *30 days*, master may hear and determine.
- s. 148 (2), (3) where registered land sold by sheriff under execution claims against the land shall be brought within *14 days* or purchaser will be registered as owner.
- s. 149 (1) tax purchaser's title to be registered after *3 months* have elapsed from notification of those appearing on register unless someone has become entitled by priority of registration.
- (2) person acquiring interest after tax sale to file claim within *1 month*.

The Law Enforcement Compensation Act, 1967 1967, c. 45

- s. 6 claims for compensation to be made within *one year*, but Board may extend time.

The Libel and Slander Act c. 211

- s. 6 action to be commenced for libel in newspaper etc., within *3 months* after it comes to plaintiff's knowledge, but, such action can include libels made by same defendant in same newspaper within the preceding *1 year*.

The Lightning Rods Act c. 213

- s. 11 (1) action may be brought if damage occurs within 10 years of installation.
- (2) action to be commenced after 60 days and before 1 year.

The Loan & Trust Corporations Act c. 222

- s. 45 (2) directors liable for wages only if sued within 1 year of due date and execution unsatisfied, or if corporation has, within that period, been liquidated. Directors not liable unless sued while directors or within 1 year of ceasing so to be.

The Master and Servant Act c. 230

- s. 4 (3) proceedings under act to be taken within 6 months of termination of employment or last payment of wages, whichever last happens.
(1961-62, c. 77, s. 1 (3))

The Mechanics' Lien Act c. 233

- s. 21 (1), (2), claims for mechanics' liens to be registered within
(3), (4), 37 days.
(5)

The Medical Act c. 234

- s. 43 actions for negligence etc., to be commenced within 1 year.

The Mental Health Act, 1967 1967, c. 51

- s. 58 actions, prosecutions and other proceedings to be commenced within 6 months.

The Mental Hospitals Act c. 236

- s. 10 (2) actions under Act to be commenced within 6 months.

The Mortgages Act c. 245

- s. 19 (2) no action may be brought after 1 year from expiration of mortgage.

The Motor Vehicle Accident Claims Act, 1961-62 1961-62, c. 84

- s. 17 actions against the Registrar governed by s. 147 of *The Highway Traffic Act*.

The Municipal Act

c. 249

- s. 340 (1) claim for compensation to be brought within *1 year*.
- (2) infants etc.—*1 year* from ending of incapacity.
- (3) exception as to acquiring easement.
- s. 346 (2) claim for injurious affection to be filed within *60 days*.
- (3) if not filed within *60 days* barred unless successfully apply to a judge of the S.C. within *1 year*.
- (5) claims not barred if plans insufficient.
- (6) section does not apply to claims of infants etc.
- s. 443 (2) no action for non-repair of public roads to be brought after *3 months* from time of damage.
- s. 465 (2) compensation for land taken by mistake in opening road allowance must be claimed within *1 year*.

The Negligence Act

c. 261

- s. 9 actions against joint tortfeasors for contribution or indemnity must be commenced within *1 year* of judgment or settlement.

The Ontario Mental Health Foundation Act, 1960-61

1960-61, c. 67

- s. 12r actions under Act to be commenced within *6 months*. (1965, c. 88, s. 1)

The Ontario-St. Lawrence Development Commission Act

c. 279

(Renamed, St. Lawrence Parks Commission Act, 1964, c. 84, s. 1)

- s. 15a (1) lost property must be claimed within *3 months*.
- (2) can obtain payment within *1 year*. (1966, c. 147, s. 1)

The Personal Property Security Act, 1967

1967, c. 73

- s. 45 (4) claims against The Personal Property Security Assurance Fund must be made within *1 year*.

The Pharmacy Act c. 295

- s. 57 actions for negligence etc., to be commenced within 6 months.

The Power Commission Act c. 300

- s. 32 (1) no action under sections 25 to 28 unless brought within 1 year.
- (3) no action lies for loss of profits etc.
- (4) subsections 1 and 2 can be set aside by agreement.

The Private Hospitals Act c. 305

- s. 22a (3) municipality's right to recover under s. 22a (1) is limited to 1 year. (1967, c. 77)

The Private Sanitaria Act c. 307

- s. 49 actions by released patients to be commenced within 12 months.

The Provincial Parks Act c. 314

- s. 10a lost property to be claimed within 3 months, value recoverable within 1 year. (1960-61, c. 79, s. 1)

The Public Authorities Protection Act c. 318

- s. 11 action for act done under public authority to be commenced within 6 months.

The Public Hospitals Act c. 322

- s. 29 (3), (4) municipality's right to recover is limited to 1 year, but if a conveyance of land is taken as recovery, its value may be realized outside of the 1 year period.
- s. 33 action against hospital or employee for negligence etc., to be brought within 6 months of discharge of patient.

The Public Lands Act c. 324

- s. 32 claims for compensation in case of double etc., grants to be commenced within 5 years of discovery of error.

- s. 33 (3) claim for deficiency to be brought within 5 years and deficiency must be at least 1/10th of grant.

The Public Officers Act c. 326

- s. 12 in actions against sureties of public officers no damages will be recovered except re matters arising within the preceding 10 years.

The Public Utilities Act c. 335

- s. 32 actions under Act to be brought within 6 months or if damage continues, within 1 year of original cause of action.

The Public Works Act c. 338

- s. 24 claim for compensation to be made within 6 months, or within 1 year if damage continuing.

The Radiological Technicians Act, 1962-63 1962-63, c. 122

- s. 13 actions for negligence etc., to be within 12 months.

The Railways Act, R.S.O. 1950 c. 331

- s. 267 (1) subject to s. 139 (4), all actions for damages etc., are to be commenced within 1 year.
- (2) exception as to actions on contracts of carriage of goods.

The Reciprocal Enforcement of Judgments Act c. 345

- s. 2 (1) may apply to have judgment registered within 6 years of its date.

The St. Clair Parkway Commission Act, 1966 1966, c. 146

- s. 22 (1) lost property to be claimed within 3 months.
- (2) value may be claimed within 1 year.

The Sanatoria for Consumptives Act c. 359

- s. 53 actions for negligence etc., to be brought within 6 months of discharge, etc.

The Securities Act, 1966 1966, c. 142

- s. 64 (2) purchaser has right to rescind contract of sale within 90 days of receiving prospectus.

s. 70 (4) action for rescission when s. 69 (1) or (2) applies to a contract to be brought within *3 months* from serving of notice.

s. 113 actions against insiders to be brought within *2 years*.

The Surrogate Courts Act

c. 388

s. 67 (2), (3) may make application for order allowing claim against estates within *30 days* of notice of contestation or within *3 months* if judge allows.

s. 70 *The Limitations Act* not to apply in certain circumstances.

The Telephone Act

c. 394

s. 86 no action to be brought after *6 months*.

The Trustee Act

c. 408

s. 38 (4) no actions by executors or administrators for torts against the deceased shall be made after *1 year* from date of death.

The Veterinarians Act

c. 416

s. 18 actions for negligence, etc., to be brought within *6 months*.

The Woodmen's Lien for Wages Act

c. 436

s. 7 (3) contractor's claim for lien to be filed before the 1st of September next following work.

(4) in other cases—other dates—given in section.

s. 10 (1) lien ceases unless proceedings taken to enforce it within *30 days*.

The Workmen's Compensation Act

c. 437

s. 21 (1) claim for compensation to be made within *6 months*.

(5) failure to come within period does not raise an absolute bar.

2. TIMES FOR GIVING NOTICE OF CLAIM

The Creditors' Relief Act

c. 78

- s. 32 (5) notice of contest to be given to the sheriff within 8 days—judge may allow more time.

The Damages by Fumes Arbitration Act

c. 86

- s. 3 (1) notice of damage to be given within 7 days of occurrence.

The Division Courts Act

c. 110

- s. 77 notice of dispute to be left with clerk within 10 days of service of summons.
- s. 82 (2) unless within 5 days of payment into court the plaintiff gives notice to the contrary, he is deemed to have settled.
- (3) if notice not given, plaintiff gets money in court less \$1.00 to be paid to defendant for his trouble.
- (4) judge may allow giving of notice after 5 days.
- s. 87 unless notice of dispute filed within 10 days plaintiff need not prove liability—but, by s. 88 (4), judge may set aside default judgment and allow trial of case on such terms as seem just.
- s. 172 if goods insufficient to satisfy claims of all attaching creditors, a creditor shall not share unless he gave notice of his attachment within 1 month of the first attachment.

The Drainage Act, 1962-63

1962-63, c. 39

- s. 74 (1) proceedings for determination of claims, etc., for negligence, etc., instituted by giving 10 clear days' notice.
- (2) filing of notice—to be filed and served within 2 years of arising of complaint.

The Highway Improvement Act

c. 171

- s. 33 (4) no action shall be brought unless notice served on Minister within 10 days of injury—but, failure to give or insufficiency of notice may not be a bar to action if judge is of opinion that there is a reasonable excuse for want or failure and that the Crown is not prejudiced in its defence.

The Insurance Act

c. 190

- ss. 99 notice and proof of loss requirements.
- 111 (2) (s.c. 6)
- 204 (2) (s.cs. 3 and 4)
- 223 (1)

The Law Society Act

c. 207

- s. 53 (5) (b) no grant *ex* compensation fund unless notice received by Secretary within *6 months* or such further time up to *18 months* as the benchers may allow.

The Libel and Slander Act

c. 211

- s. 5 (1) no action for libel in a newspaper, etc., unless defendant given notice within *6 weeks*.

The Lightning Rods Act

c. 213

- s. 11 (2) notice of claim to be given within *30 days* of loss.

The Mental Hospitals Act

c. 236

- s. 78 notice of liability for and demand for payment of maintenance to be sent on 1st day of January, April, July and October—sum to be paid forthwith on demand.

The Municipal Act

c. 249

- s. 443 (5) no action unless notice of the claim and of the injury has been given, in case of county or township—within *10 days*, and in case of an urban municipality—within *7 days*.
- (6) failure to give notice is not a bar if in the opinion of the judge the corporation is not prejudiced and to bar would be unjust, notwithstanding that a reasonable excuse for failure is not established.

The Negligence Act

c. 261

- s. 9 requirements of notice not disturbed by s. 9.

The Power Commission Act

c. 300

- s. 32 (2) no action to be brought under ss. 25-28 unless notice of claim served within *90 days* of cause of action arising.

s. 32 (4) subsection 2 does not apply in face of agreement between claimant and Commission.

s. 36 notice of crop damage to be given at as early a date as possible and in any case, not later than *60 days* after cause for complaint arose—but, board of valuation may proceed despite lack of notice if there is a reasonable excuse and the Commission is not prejudiced.

The Proceedings Against the Crown Act, 1962-63 1962-63, c. 109

s. 6a except in case of counterclaim or claim by way of set-off, no action against Crown unless notice given *60 days* before commencement of action—and no action under s. 5 (1) (c) unless notice given within *10 days* of claim arising.
(1965, c. 104, s. 1)

The Public Hospitals Act c. 322

s. 21 (1) notice to be given of indigent patient within *90 days* of his admission.

(2) if patient becomes indigent after admission, notice to be given not later than *90 days* after it becomes known. (1965, c. 107, s. 3)

The Public Utilities Act c. 335

s. 56 (6) notice of claim for compensation to be given within *1 month after expiration of calendar year* in which injury occasioned.

The Public Works Act c. 338

s. 22 notice of compulsory taking to be given within *60 days* of registration of the plan.

s. 39 (1) claims arising under contracts may be made by giving notice.

(2) no referral to O.M.B. unless notice given to secretary of Department within *6 months* of completion of contract.

The Public Works Creditors Payment Act, 1962-63

1962-63, c. 121

s. 2 (1) if not paid by contractor creditor to give notice of claim to Crown within *90 days*.

The Reciprocal Enforcement of Judgments Act c. 345

- s. 5 notice of registration on an *ex parte* order to be given within 1 month of registration.

The Securities Act, 1966 1966, c. 142

- s. 70 (1) notice of rescission to be served within 60 days of delivery.
- s. 70 (2) notice of rescission to be served within 7 days of delivery.

The Surrogate Courts Act c. 388

- s. 67 (4) not less than 7 days' notice shall be given to the personal representative of claims *vs.* the estate.
- s. 68 (3) not less than 7 days' notice to be given to the personal representative of order for directions.

The Voters Lists Act c. 420

- s. 16 (1) voter to give notice of complaint within 14 days.

The Warehousemen's Lien Act c. 423

- s. 3 (1) notice of lien to be given within 2 months of deposit.
- (3) failure to give notice voids lien as from expiration of the 2 months.

The Woodmen's Lien for Wages Act c. 436

- s. 22 (1) notice of dispute to be given within 14 days of service of warrant or writ of attachment.

The Workmen's Compensation Act c. 437

- s. 7 (2) notice of election to be given within 3 months of accident or death.
- s. 21 (1) notice of accident to be given as soon as practicable unless claim is made within 6 months.
- s. 21 (5) failure to give notice does not affect right to compensation if Board is of opinion that employer not prejudiced or, where compensation payable out of accident fund, if Board is of opinion that claim is just and ought to be allowed.

3. TIMES FOR GIVING NOTICE OF OR FOR TAKING AN APPEAL

The Abandoned Orchards Act, 1966

1966, c. 1

- s. 6 (1) appeal against Provincial Entomologist's certificate by delivering notice to the Provincial Entomologist within *15 days* of service of the certificate.

The Air Pollution Control Act, 1967

1967, c. 2

- s. 6 (2) appeal from Minister to judge of county or district court within *15 days*.

The Arbitrations Act

c. 18

- s. 16 (1) where submission provides for appeal, appeal lies to a judge in court and from him to Court of Appeal.
- (3) notice of appeal to be served within *14 days*, returnable within *30 days*.
- (10) court has power to extend time or to dispense with provisions of this section.
- s. 30 (1) no application, other than an appeal, to set aside award, may be made after *6 weeks*, EXCEPT by leave of the Court.
- (2) leave may be granted before or after expiration of *6 weeks*.
- (3) vacations not to be reckoned.

The Architects Act

c. 20

- s. 21 (1) appeal against suspension etc., to Court of Appeal within *15 days*.

The Assessment Act

c. 23

- s. 37 (3) appeal against by-law within *14 days*.
- (4) where no by-law passed before 1st March, person affected may give notice of intention to appeal on or before 21st March.
- s. 50 appeal to county judge from the assessment within *10 days* from time notice given.
- s. 56 (3) by-law to fix (*inter alia*) time for assessment appeals to court of revision, but period for appeal to be not less than *14 days* nor more than *30 days*.

- s. 56 (4) provisions of s. 72 apply.
- (6) provision for extension of time for return of assessment roll, and hence for closing of court of revision.
- (9) provision for extension of time for closing court of revision.
- s. 65a (9) notice of appeal to be given within *21 days*.
(1960-61, c. 4, s. 8)
- s. 72 (2) notice of appeal to be given within *14 days*.
- (3) same as subsection 2 when appealing another's assessment.
(1967, c. 4)
- (14) every notice required is to be completed at least *10 days* before sitting of the court.
- (16) have *10 days* to appeal changes made by court.
- (19) provision for extension of time for making complaints.
- (22) notice of decision of court of revision to be mailed within *14 days* and appeal to county judge lies within *10 days* of mailing.
(1966, c. 10, s. 14 (3))
- (22a) if assessment greater than \$25,000, have *21 days* to appeal.
(1966, c. 10, s. 14 (3))
- s. 75 (2) notice of appeal to be given to assessment commissioner to be given within *10 days* after notification of decision of court of revision.
- s. 82 (2) notice of decision of judge to be given within *10 days*. Appeal to O.M.B. within *21 days* of mailing of notice.
- s. 83 (4) notice of appeal to O.M.B. under s. 83 (1) and (2) to be given within *21 days* after notice of decision appealed from is given.
(1966, c. 10, s. 15 (2))
- s. 83 (4a) ditto, appeals under s. 83 (2a).
(1966, c. 10, s. 15 (3))
- s. 93 (5) notice of appeal by county assessor to court of revision to be given within *30 days*.

- s. 96, para. 1 appeal as to equalization of assessments to be taken within *21 days*. (1960-61, c. 4, s. 16)
- s. 104 (15) municipality may appeal to Minister re budget within *10 days* of receipt.
- (20) municipality may appeal to the O.M.B. re equalization within *30 days* of mailing of equalized report.
(1964, c. 4, s. 6; 1965, c. 6, s. 7)
- s. 130 (2) time for appeal to court of revision to be within *10 days* before last day fixed for return of roll—and appeal to county judge from court of revision lies within *10 days* of decision of court of revision.
- s. 131 (2) application for cancellation etc., of taxes to be made before 28th Feb. of following year.
- (5) appeal to county judge within *10 days*.
- (7) notice of appeal to be given within *10 days* of notice of decision of court of revision.
- s. 132 (2) notice of application for increase of taxes to be given not less than *14 days* before date of hearing.
- (4) appeal lies to county judge within *10 days* of mailing of decision of court of revision.
- s. 132 (7) notice of appeal to be given to clerk of municipality within *10 days* of mailing notice of intention under subsection 4.

The Bees Act c. 33

- s. 7 (1) bee keeper may appeal against order of inspector within *5 days*.

The Boilers and Pressure Vessels Act, 1962-63 1962-63, c. 8

- s. 39 (1) appeal lies from action of inspector within *30 days*.

The Boundaries Act c. 38

- s. 13 (2) notice of appeal from confirmation to be served within *20 days*.

The Certification of Titles Act c. 48

- s. 9 (3) appeal lies against finding of director of titles within *15 days*.

The Collection Agencies Act

c. 58

- s. 25 (1) review by Director lies from decision of registrar within *30 days*.
- (2) hearing to be within *30 days* of giving notice of hearing. (1964, c. 7, s. 11)
- s. 26 (2) appeals to be by notice of motion served within *30 days* of delivery of notice of decision—procedure to be same as for an appeal of an action to the Supreme Court. (1964, c. 7, s. 11)

The Conservation Authorities Act, 1968

1968, c. 15

- s. 23 (2) application for review to be within *1 month*.
- s. 31 (5) notice of appeal to be sent to O.M.B. within *21 days*.

The Construction Hoists Act, 1960-61

1960-61, c. 11

- s. 14 (1) appeal to minister within *10 days* of receipt of notice.

The Consumer Protection Act, 1966

1966, c. 23

- s. 11 (1) right to request review of Registrar's decision, within *30 days*.
- (2) notice of hearing to be served within *30 days* of serving notice under subsection 1.
- s. 12 (2) appeals to be by originating notice to be served within *30 days* of notice of decision.

The Controverted Elections Act

c. 65

- s. 60 (2) appellant to deposit security for costs within *8 days* of judgment.
- (5) appellant to serve notice of appeal on all parties within *3 days* of depositing security or such further time as judge may allow.

The Corporations Tax Act

c. 73

- s. 79 (1) objection to assessment to be made within *90 days* of mailing of notice.
- s. 80 (1) no appeal after *90 days*.
- (5) appeal null and void unless security for costs deposited within *60 days*.

The Damages by Fumes Arbitration Act c. 86

- s. 5 (1) appeal lies to O.M.B. within 20 days of award.

The Dentistry Act c. 91

- s. 27 appeal from order of discipline committee to the Board lies within 30 days and a further appeal to C.A. within 30 days of Board's decision. (1966, c. 38, s. 14)

The Department of Municipal Affairs Act c. 98

- s. 31 appeal to Minister lies within 5 days of order of Department.
- s. 55 (2) appeal by Department lies within 20 days of return of roll.
- (3) rights of appeal from decision of court of revision or judge—same as those under *The Assessment Act*.

The Dependants' Relief Act c. 104

- s. 12 (4) appeal by notice of motion to be served within 30 days of the date of the decision appealed from.
- (5) time may be extended by a judge of the C.A. either before or after expiry.

The Division Courts Act c. 110

- s. 106 (1) application for new trial to be made within 14 days after decision.
- (2) judge may accept application during a further 14 days if reasonable excuse for delay shown.
- (3) where personal service not effected application may be made within 14 days of decision coming to the knowledge of the defendant.

The Dog Tax etc., Act c. 111

- s. 12 (7) appeal to Commissioner to be made within 30 days of report to clerk of the municipality.
- s. 12 (9a) appeal from report of valuer within 30 days to a judge of county or district court.

The Dower Act

c. 113

- s. 31 (1) appeal to a judge in court to be made within *1 month* from filing of sheriff's return to writ or within such further time as a judge of the S.C. allows.

The Drainage Act, 1962-63

1962-63, c. 39

- s. 19 (5) dissatisfied owner who is assessed for more than \$200 may appeal to judge within *30 days*.
- s. 23 (3) council may apply for review of engineer's account by judge within *60 days*, the engineer to get at least *30 days'* notice.
- (4) if account greater than \$500, further appeal lies to the referee within *30 days* of judge's decision.
- s. 30 (4) provisions of *The Assessment Act* re certain matters on appeal, adopted by reference.
- s. 35 appeal lies to referee from engineer's report within *30 days*.
- s. 36 appeal where report indicates work not required must be taken within *21 days*.
- s. 37 (1) municipality may appeal to referee within *6 weeks* after report sent to clerk.
- s. 49 (1) municipality liable for contribution may appeal to referee within *30 days* of service of by-law authorizing the work.
- s. 83 (1) appeal lies from decision of referee to the C.A. within *30 days*.

The Election Act

c. 118

- s. 133 (1) notice of intention to appeal from decision of judge to be given within *2 days*.

The Elevators and Lifts Act

c. 119

- s. 12 (1) appeal to Minister to be taken within *10 days*.

The Embalmers and Funeral Directors Act

c. 120

- s. 16 (5) appeal to judge of S.C. to be taken within *30 days*.

The Employment Agencies Act c. 121

- s. 6 (3) appeal from decision of supervisor to county or district court judge to be taken within *10 days*.

The Employment Standards Act, 1968 1968, c. 35

- s. 28 (3) appeal to Minister for review within *21 days*.

The Expropriations Act, 1968-69

- s. 32 (2) appeal to C.A. to be taken within *6 weeks* from serving of determination or order.

The Family Benefits Act, 1968 1968, c. 39

- s. 11*b* appeal from Board of Review to Court of Appeal within *30 days*.

The Farm Products Marketing Act c. 137

- s. 10*a* (5) within *7 days* of service of notice of appeal, Board to notify appellant of details of hearing.
- (6) appeal to be heard within *30 days*, but Board may extend time at request of appellant.
- (10) appellant to be notified of decision within *10 days*. (1965, c. 39, s. 4)

The Fire Marshals Act c. 148

- s. 19 (5) appeal lies to Fire Marshal within *10 days*.
- (6) appeal lies from Fire Marshal to county court judge within *5 days*.
- (7) if failure to prosecute appeal within *60 days* it may be dismissed at request of Fire Marshal. (1960-61, c. 29 s. 1 (1))

The Highway Improvement Act c. 171

- s. 11 (4) application for leave to appeal to C.A. to be made within *30 days*.

The Hotel Fire Safety Act c. 179

- s. 23 (2) appeal lies from order to Fire Marshal within *10 days*.
- (3) further appeal to county court within *10 days*.

- s. 23 (4) if appeal not prosecuted within *30 days*, judge may dismiss on application of Fire Marshal.
(1960-61, c. 36, s. 1)

The Income Tax Act, 1961-62 1961-62, c. 60

- s. 18 (1) notice of objection to assessment to be made within *90 days* of mailing of notice.
- s. 19 (1) taxpayer who has served notice of objection may appeal to S.C. after Treasurer has confirmed or reassessed OR after *180 days* have elapsed, —but, no appeal after *90 days* from mailing of confirmation or reassessment.
- s. 20 (1) Treasurer to reply to notice of appeal within *60 days*.

The Insurance Act c. 190

- s. 60 (2) appeal from decision of receiver lies to judge of the S.C. within *30 days*.

The Lakes and Rivers Improvement Act c. 203

- s. 100 (3) application for leave to appeal to be made within *10 days* of order.
- (4) judge to determine when appeal to be brought.
- (5) appeal abandoned if not brought within that time—Judge may vary.

The Land Titles Act c. 204

- s. 63 (5b) claimant has *20 days* to appeal.
(1966, c. 77, s. 17)

The Lightning Rods Act c. 213

- s. 6 (2) applicant or licensee may appeal decision of Fire Marshal to county or district court judge within *10 days* of receiving the decision.

The Line Fences Act c. 216

- s. 11 (1), (2) any person dissatisfied may appeal the award of fence-viewers to county or district court judge —notice of appeal to be served within *1 week* of notification of the award.

The Liquor Control Act c. 217

- s. 140 (1) any person convicted under Act may appeal to county court judge if notice of appeal given within *20 days* of conviction.

- s. 140 (11) unless appellant applies to judge for a summons within *30 days* of giving notice of appeal, appeal will be dismissed.

The Loan and Trust Corporations Act c. 222

- s. 126 (1) corporation may request a hearing and review of Registrar's decision within *30 days*.
- (7) Registrar's decision on review may be appealed to a judge of the C.A. within *30 days* of delivery of the decision.

The Local Improvement Act c. 223

- s. 29 (3) complaint as to amount of flankage in respect of which assessment imposed to be made to clerk of the municipality within *10 days*—to be transmitted forthwith to court of revision—complainant to receive *6 days'* notice of date of hearing.

The Logging Tax Act c. 224

- s. 16 (1) any taxpayer may serve notice of appeal on Treasurer within *60 days* of date of mailing of notice of assessment.
- s. 18 (1) appellant may send notice of dissatisfaction within *60 days* of date of mailing of decision of Treasurer.

The Master and Servant Act c. 230

- s. 10 (2) time for appeal to be same as under *The Summary Convictions Act* which imports a *30 day* period from Part XXIV, section 722 of the Criminal Code of Canada.

The Mechanics' Lien Act c. 233

- s. 40 (3) master's report is confirmed unless notice of appeal served within *15 days*.

The Medical Act c. 234

- s. 41 (1) any member aggrieved may appeal etc., within *30 days*.
- (2) any two members of the Council may appeal within *30 days*.
- (3) College may appeal from S.C. to C.A. within *30 days*.

- s. 41 (6) if applicant fails to pay certain costs within 15 days of demand, appeal deemed abandoned.
(1966, c. 85, s. 7)

The Mining Act c. 241

- s. 138 (1), (3) appeal from recorder to Commissioner to be by notice in writing filed and served within 15 days—Commissioner may extend time up to another 15 days.
- s. 156 (1) appeal from order of Commissioner to be taken within 15 days—Commissioner or judge of S.C. may allow extension of up to 15 more days.
- (2) unless appeal set down and certificate of same lodged with recorder within 5 days of end of time under subsection 1, appeal deemed abandoned.

The Mining Tax Act c. 242

- s. 10 (1) appeal against tax roll to be brought within 15 days.
- (8) notice of appeal to C.A. to be lodged within 15 days.

The Mortgage Brokers Registration Act c. 244

- s. 11 (1) may request a hearing and review of Registrar's decision by Director within 30 days.
(1964, c. 63, s. 7)
- s. 11a (1), (2) further appeal lies to a justice of the C.A. within 30 days.
(1964, c. 63, s. 7)

The Municipal Act c. 249

- s. 14 (16) notice of objection may be filed within 28 days.
- s. 58 (9) any five electors may appeal within 2 months after the filing of by-law establishing polling subdivisions.

The Municipal Arbitrations Act c. 250

- s. 7 award of Official Arbitrator may be appealed within 6 weeks after notice of filing.

The Municipal Franchises Act c. 255

- s. 10 appeal may be taken to C.A. within 15 days.

The Municipal Tax Assistance Act

c. 258

- s. 4 (2) notice of appeal to be sent to secretary of Board within *21 days* of delivery of notice of valuation.
- (3) notice of time etc., of hearing to be sent *14 days* before date.

The Municipality of Metropolitan Toronto Act

c. 260

- s. 32 (9) notice of appeal to be given within *21 days*.
- s. 139 (7) appeal to O.M.B. over estimates to be taken within *15 days* after notice.
(1966, c. 96, s. 12)

The Nurses Act, 1961-62

1961-62, c. 90

- s. 11 (1) aggrieved person may apply to judge of the S.C. for review within *3 months* of notice of refusal or neglect to register etc.

The Ontario Energy Board Act, 1964

1964, c. 74

- s. 21 (5) notice of appeal to O.M.B. to be sent within *14 days* of the award or within such further time as the O.M.B. allows.
- (7) appeal from O.M.B. to C.A. governed by s. 95 of *The Ontario Municipal Board Act*.
- s. 32 (1) no appeal to C.A. unless leave obtained within *1 month* of order sought to be appealed from.
- s. 41 (8) notice of appeal from O.M.B. to board of arbitration to be sent within *14 days*.
- (10) appeal from O.M.B. to C.A. governed by s. 95 of *The Ontario Municipal Board Act*.

The Ontario Highway Transport Board Act

c. 273

- s. 20 petition to Lt.-Governor in Council to be filed within *60 days*.
- s. 21 (1) no appeal from Board to C.A. unless leave obtained within *1 month* of order or such further time as C.A. allows.
- (2) notice of appeal to be sent within *10 days* of obtaining leave.
(1961-62, c. 92, s. 4)

The Ontario Municipal Board Act

c. 274

- s. 94 petition to Lt.-Governor in Council to be brought within *28 days*.
- s. 95 (1) no appeal to C.A. unless leave obtained within *1 month* or such further time as C.A. allows.
- (2) notice of appeal to be sent within *10 days* of obtaining leave. (1961-62, c. 96, s. 3 (1); 1965, c. 89, s. 2)

The Operating Engineers Act, 1965

1965, c. 92

- s. 25 (1) appeal to Minister within *10 days* of receipt of notice of decision of Board.

The Ophthalmic Dispensers Act, 1960-61

1960-61, c. 72

- s. 16 (2) notice of appeal from suspension etc., to be given within *2 weeks* of service of order appealed from.

The Pension Benefits Act, 1965

1965, c. 96

- s. 23 (1) employer may serve notice of objection within *60 days* of mailing of notice action objected to.
- s. 24 (1) further appeal to the C.A. within *90 days* after Commission has confirmed its opinion or after *90 days* and before *180 days* have elapsed after service of notice of objection if Commission has not notified appellant of a decision.

The Pesticides Act, 1967

1967, c. 74

- s. 7 (2) notice of appeal to judge of county or district court must be given in *2 weeks*.

The Pharmacy Act

c. 295

- s. 29 (5) appeal from cancellation of registration etc., to be brought within *1 month*.
(1965, c. 115, s. 6 (2))
- s. 51 (7) appeal from reprimand etc., to be made within *15 days*.

The Power Commission Act

c. 300

- s. 33 (6) owner or Commission may appeal the amount of compensation within *60 days* of mailing of notice of valuation.

- s. 48 (11) notice of appeal to O.M.B. to be sent within *21 days* of delivery of notice of valuation.
- (12) parties to be notified of date of hearing at least *14 days* before date.

The Private Hospitals Act

c. 305

- s. 9a (2) applicant may appeal to S.C. the refusal of Commission to approve transfer of shares within *30 days* of receipt of notice of the refusal.
(1962-63, c. 107, s. 5)

The Private Investigators and Security Guards Act, 1965 1965, c. 102

- s. 20 (1) may request that decision of Registrar be reviewed by Commissioner within *30 days* of delivery of notice of decision contested.
- s. 21 (2) further appeal to C.A. by notice of motion served on Commissioner within *30 days* of delivery of notice of his decision.

The Professional Engineers Act

c. 309

- s. 28 (4) appeal to C.A. from suspension etc., to be brought within *15 days*.

The Psychologists Registration Act

c. 316

- s. 9 (1) appeal to judge of S.C. against refusal to register etc., to be brought within *3 months*.

The Public Accountancy Act

c. 317

- s. 22 appeal to a judge of S.C. against refusal to grant licence etc., to be brought within *3 months*.

The Public Health Act

c. 321

- s. 32 appeal from order of local board or medical officer of health to judge of county or district court to be brought within *4 days* of service of the order.
- s. 46 (6) appeal from decision of local board to be by notice served within *7 days* of receipt of notice of the decision of the board.
- (7) must be at least *7 days'* notice of time of hearing given to all parties.
- s. 101 (3) appeal from order re dairies etc., to be brought within *7 days* of notice of order.

The Radiological Technicians Act, 1962-63 1962-63, c. 122

- s. 11 (2) notice of appeal to be given within *2 weeks* of service of copy of order.

The Railways Act, R.S.O. 1950 c. 331

- s. 89 (24) may appeal from decision of arbitrator to the S.C. within *1 month* after receipt of notice of award.
- s. 262 (2) notice of appeal to C.A. from order of Board to to be given within *10 days* after date of order.

The Real Estate and Business Brokers Act c. 344

- s. 31 (1) notice requesting hearing and review of decision of Registrar by Director to be served within *30 days* of delivery of notice of decision.
(1964, c. 99, s. 12)
- s. 32 (2) further appeal to C.A. to be by notice of motion served on Director within *30 days* of the delivery of notice of the decision of the Director.
(1964, c. 99, s. 12)

The Retail Sales Tax Act, 1960-61 1960-61, c. 91

- s. 17 (1) notice of objection to assessment to be served within *60 days* of mailing of notice.
(1966, c. 138, s. 4)
- s. 18 (1) appeal to S.C. to be brought within *90 days* of Treasurer's ruling on notice of objection.
- (5) appeal null and void unless security deposited within first *60 days*.

The St. Clair Parkway Commission Act, 1966 1966, c. 146

- s. 7 (4) application for review of apportionment by O.M.B. to be sent in within *1 month* of receipt of notice of apportionment.

The Schools Administration Act c. 361

- s. 18 (2) Minister may appeal to C.A. within *1 month* of decision of judge.
- s. 25 (3) dismissal or termination may be appealed within *15 days*.

The Secondary Schools & Boards of Education Act

c. 362

- s. 6 (6) appeal from award to county judge to be brought within *20 days* of receipt of copy of award.
(1961-62, c. 131, s. 1)
- s. 35 (10) reference to O.M.B. where decision of secretary objected to within *30 days* of mailing of decision.

The Securities Act, 1966

1966, c. 142

- s. 28 (1) Commission to give hearing and review if requested within *30 days* of decision etc., of Director.
- s. 29 (2) further appeal to C.A. by notice of motion sent within *30 days* of mailing of notice of order appealed from.

The Succession Duties Act

c. 386

- s. 34 (3) notice of appeal from statement to be sent within *1 month* of service of statement.
- s. 34 (5) notice of dissatisfaction to be served on Treasurer within *1 month* of service of notice of decision.
- (13) provision for Treasurer to extend time.
(1965, c. 126, s. 6)

The Summary Convictions Act

c. 387

- s. 3 *30 day* time limit set out in s. 722 of Part XXIV of the *Criminal Code*, with appeal court's right to extend time, adopted by reference.

The Surrogate Courts Act

c. 388

- s. 32 (4) appeals to be made by notice of motion served within *30 days* of judgment, etc.
- (5) time may be extended by judge of C.A.

The Surveyors Act

c. 389

- s. 36 (4) appeal to judge of the S.C. to be by way of notice of motion served within *15 days* of service of copy of decision appealed from.
- s. 36 (7) further appeal to C.A. by leave of judge of the C.A. if leave applied for within *15 days* of the decision complained of.

The Surveys Act

c. 390

- s. 48a (2) notice of appeal from Minister to Supreme Court judge within *30 days*. (1968, c. 131)

The Telephone Act

c. 394

- s. 19 (1) no appeal from Commission to C.A. unless leave obtained from court within *1 month* of decision complained of.
- (2) appellant to give notice of appeal within *10 days* of obtaining leave.

The Theatres Act

c. 396

- s. 60 (1) appeal to Minister to be within *10 days* of receipt of notice of decision, etc.

The Training Schools Act, 1965

1965, c. 132

- s. 17 application to vary municipal liability to be made within *30 days* of mailing of copy of order, establishing liability.

The Upholstered and Stuffed Articles Act, 1968

1968, c. 140

- s. 11 (1) notice to request a hearing and review by Director within *30 days*.
- s. 12 (2) appeal from Director to High Court judge within *30 days*.
- s. 19 (5) appeal to Director within *5 days*.
- s. 25 (3) no proceedings under clauses (a) and (b) of subsection (1) unless taken within *3 years*.
- s. 25 (4) no proceedings under clause (c) of subsection (1) unless taken within *1 year*.

The Used Car Dealers Act, 1964

1964, c. 121

- s. 16 (1) have *30 days* in which to request hearing and review.
- s. 17 (2) further appeal to a justice of the C.A. to be by notice of motion served within *30 days* of delivery of notice of decision.

The Veterinarians Act c. 416

- s. 14 (5) appeal against suspension etc., to be taken within *15 days* of date of order, etc.

The Voters Lists Act c. 420

- s. 14 (1) have *14 days* to complain or appeal to have own name or any name corrected in, entered on, or removed from voters list.

UNCONSOLIDATED AND UNREPEALED

The Grand River Conservation Commission Act, 1932 1932, c. 55

- s. 11 municipal corporation may appeal apportionment to O.M.B. within *30 days* of receipt of application referred to in s. 9.

The Grand River Conservation Act, 1938 1938, c. 15

- s. 9 (2) municipal council may appeal apportionment to O.M.B. within *30 days* of receipt of notice of apportionment. (1954, c. 33, s. 1)
- s. 18 (4), (5) applicant not satisfied with report of board of engineers has *1 month* of mailing of copy of report to appeal to referee.
(Repealed as of January 1st, 1969, by *The Conservation Authorities Act, 1968*, 1968, c. 15, s. 40)

The Thames River Control Act, 1943 1943, c. 33

- s. 8 (2) municipal council may apply for review of apportionment by O.M.B. after *10 days'* notice to the Commission.
- s. 17 (4), (5) applicant not satisfied with report of board of engineers has *1 month* to appeal to referee.





